



EDUCATIONAL COMMISSION FOR  
FOREIGN MEDICAL GRADUATES

3624 Market Street  
Philadelphia PA 19104-2685 USA  
215-386-5900 | 215-386-9767 Fax  
[www.ecfm.org](http://www.ecfm.org)

PERSONAL AND CONFIDENTIAL  
VIA EMAIL: [o.tulp@usat.edu](mailto:o.tulp@usat.edu)

December 14, 2018

Dr. Orien L. Tulp  
Professor and President  
University of Science, Arts & Technology (USAT) Faculty of Medicine  
Main Campus  
S. Mayfield Estate Drive  
Olveston  
MONTSERRAT

Dear Dr. Tulp:

I am writing to inform you that the ECFMG Medical Education Credentials Committee ("ECFMG Committee") has completed its review of the allegation that you, individually and in your capacity as an official of University of Science, Arts & Technology (USAT) Faculty of Medicine, Montserrat, engaged in irregular behavior in connection with providing false information to ECFMG. Specifically, you provided false information to ECFMG when you (1) notified ECFMG that USAT does not operate a branch campus in Miami, FL and (2) certified to the attendance dates of several USAT students and graduates when ECFMG has information that these students were not attending USAT during some of the time periods to which you certified.

In advance of the review, the members of the ECFMG Committee were provided with the documents listed in ECFMG's October 18, 2018 letter and ECFMG's November 14, 2018 emails. A hardcopy of the complete file was also sent to your attorney, Mr. Tommy Swate, on November 16, 2018 via Federal Express. On November 16, 2018, Mr. Swate acknowledged receipt of this complete file. You made a personal appearance before the ECFMG Committee accompanied by your legal counsel, Mr. Swate. A copy of the transcript of the proceedings will be sent to you as soon as it is available.

The ECFMG Committee considered the documentation presented to it and Mr. Swate's statements. Following careful review, the ECFMG Committee determined that you engaged in irregular behavior in connection with providing false information to ECFMG.

The ECFMG Committee has determined that ECFMG will not accept any documents signed / certified by you for ECFMG on behalf of USAT, or any other medical school, for a minimum of five years from today; thereafter, the prohibition shall end only upon a petition to ECFMG conclusively demonstrating to the satisfaction of the ECFMG Committee a familiarity with, and willingness to adhere to, ECFMG policies. Your ECFMG Medical School Web Portal (EMSWP) account will remain deactivated.

In light of the ECFMG Committee's findings, the ECFMG Sponsor Note for USAT in the *World Directory of Medical Schools (World Directory)* will be updated as follows:

Dr. Orien L. Tulp  
December 14, 2018  
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*In 2018, ECFMG determined that a certain official of the University of Science Arts & Technology engaged in irregular behavior in connection with providing false information to ECFMG.*

This note will remain in USAT's ECFMG Sponsor Note in the *World Directory* for five years, regardless of whether USAT changes its name, ownership, and/or location.

Additionally, in accordance with the ECFMG *Policies and Procedures Regarding Irregular Behavior*, a permanent annotation that you engaged in irregular behavior will be included in your ECFMG record. ECFMG may report the ECFMG Committee's determination of irregular behavior to the Federation of State Medical Boards of the United States, U.S. state and international medical licensing authorities, directors of graduate medical education programs, and to any other organization or individual who, in the judgment of ECFMG, has a legitimate interest in such information.

As noted in the enclosed ECFMG *Rules of Appellate Procedure*, decisions of the ECFMG Medical Education Credentials Committee may be appealed within the 30-day time period specified.

Sincerely,



William W. Pinsky, MD FAAP FACC  
President and CEO

CC: Tommy Swate, Esq. [swatemd@aol.com](mailto:swatemd@aol.com)  
William Reil, Esq. [billreillaw@gmail.com](mailto:billreillaw@gmail.com)

Encl: As noted.



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FOREIGN MEDICAL GRADUATES

3624 Market Street  
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215-386-5900 | 215-386-9767 Fax  
www.ecfmg.org

October 18, 2018

VIA EMAIL: [usat.edu@gmail.com](mailto:usat.edu@gmail.com)

Orien Tulp, President  
University of Science, Arts & Technology (USAT) Faculty of Medicine  
Main Campus  
S. Mayfield Estate Drive  
Olveston, MONTSERRAT

Dear Dr. Tulp,

This is a follow-up to my August 21 and September 14, 2018 letters to you. As you know, it has recently come to the attention of the Educational Commission for Foreign Medical Graduates (ECFMG) that USAT in Montserrat is operating a satellite (or branch) campus in Miami, Florida. ECFMG also understands that USAT is operating satellite campuses in Texas and Puerto Rico.

As I previously advised you, in order for students and graduates of an international medical school, such as USAT, to have eligibility to apply for ECFMG Certification, ECFMG policy requires confirmation from the appropriate government authority in the branch campus country that the branch campus is authorized to operate as a medical school in such branch campus country, among other requirements.

In light of this policy, ECFMG requested that USAT provide documentation from the United States Department of Education and/or the Florida Department of Education confirming that USAT's Miami branch campus is authorized to operate as a medical school in the United States. This documentation should cover the entire time period during which the USAT Miami branch campus has been in operation. To date, ECFMG has no record of receipt of such documentation from you or USAT.

**Therefore, effective today, ECFMG's Sponsor Note in the *World Directory of Medical Schools (World Directory)* for USAT has been updated to reflect that 2019 and later graduates of USAT are no longer eligible to apply for ECFMG Certification or USMLE examinations as a step toward ECFMG Certification.**

ECFMG is also writing to your current students to advise them that, if they graduate from USAT in 2019 or later, they will be ineligible for ECFMG Certification and ineligible to register for USMLE examinations as a step toward ECFMG Certification after December 31, 2018. We are also letting them know that in order to become eligible for ECFMG Certification (or to register for USMLE examinations as a step toward ECFMG Certification) on or after January 1, 2019, the United States Department of Education and/or the Departments of Education for Florida, Texas, and Puerto Rico

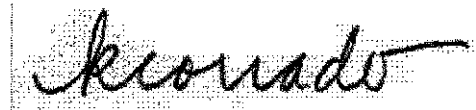
Dr. Orien L. Tulp  
October 18, 2018  
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must provide ECFMG with documentation that USAT is authorized to operate as a medical school in the United States. Otherwise, the students must transfer to and/or be officially enrolled in a medical school that is listed in the *World Directory* as meeting eligibility requirements for ECFMG Certification. In addition, the "Graduation Years" in the ECFMG note on the Sponsor Notes tab of the *World Directory* listing for the student's medical school must be listed as "Current" at the time he/she applies and on his/her test day.

USAT's 2018 and earlier graduates will continue to remain eligible to apply to ECFMG for ECFMG Certification.

Should the United States Department of Education and/or the Departments of Education for Florida, Texas, and Puerto Rico provide ECFMG with documentation that USAT is authorized to operate as a medical school in the United States, ECFMG will be happy to review USAT's eligibility for an ECFMG Sponsor Note in the *World Directory*.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Corrado", with a horizontal line extending from the end of the signature.

Ms. Kara Corrado, JD  
Vice President for Operations



Bill Reil &lt;billreillaw@gmail.com&gt;

**sponsor notes from WDOMS listing of USAT input by ECFMG: SEE NOTES IN RED/**

1 message

Orien Tulp &lt;o.tulp@usat.edu&gt;

Tue, Nov 27, 2018 at 12:08 PM

To: swatemd@aol.com, billreillaw@gmail.com, Carla Konyk - Director/Student Accounts &lt;c.konyk@usat.edu&gt;

School Details

Contact Information

Program Details

Sponsor Notes

The information below has been provided by the World Directory's sponsoring organizations.

**Canada**

- Unless indicated otherwise, Medical provincial/territorial medical regulator Canada. For more information about Registration in Canada click here.

Medical degrees obtained from this n  
FROM 2003 - 2018

- À moins d'avis contraire, les diplôme médecins dans les provinces et territ Canada qui œuvre dans le domaine telles que définies dans les normes r

Les diplômes de médecine de cette f  
DE 2003 - 2018

**Educational Commission for Foreign Me**

Students and graduates of this medic



- Unless indicated otherwise, Medical degrees obtained from this medical school are acceptable to the provincial/territorial medical regulatory authorities in Canada, and therefore acceptable to all medical organizations in Canada. For more information about the acceptable medical schools as defined in the Model Standards for Medical Registration in Canada click here.

Medical degrees obtained from this medical school are acceptable to Canada between the following period:  
FROM 2003 - 2018

- À moins d'avis contraire, les diplômes de médecine de cette faculté de médecine sont acceptables aux ordres des médecins dans les provinces et territoires du Canada, et par conséquent acceptables à toute autre organisation au Canada qui œuvre dans le domaine médical. Pour plus d'information au sujet des facultés de médecine acceptables, telles que définies dans les normes modèles pour l'inscription médicale au Canada, cliquez ici.

Les diplômes de médecine de cette faculté de médecine sont acceptables pour le Canada entre la période suivante:  
DE 2003 - 2018

**Educational Commission for Foreign Medical Graduates (ECFMG), United States of America**

- Students and graduates of this medical school are eligible to apply to ECFMG for ECFMG Certification and for examination, provided that:
  - For medical school students officially enrolled in this school, the graduation years are listed below as "current".
  - For graduates of this medical school, their graduation year is included in the graduation years listed below.

Graduation Years:

2003 - 2018

- All other eligibility requirements are met. Refer to the ECFMG Information Booklet for detailed information.
- **Note: As of January 1, 2019, students and graduates of this medical school with a graduation year of 2019 and later are not eligible to apply to ECFMG for ECFMG Certification, which also renders them ineligible to apply to ECFMG for the United States Medical Licensing Examinations (USMLE) as a step toward ECFMG Certification.**
- **Currently, students and graduates of USAT are subject to enhanced procedures that must be met in order to be eligible to apply for ECFMG Certification related services, including but not limited to: ECFMG Certification, USMLE examinations that lead to ECFMG Certification, and Electronic Residency Application Service (ERAS®) Support Services. ECFMG will provide information and instructions to applicants upon receipt of application.**

Orien L Tulp, PhD, MD, FACN, CNS  
Professor and President  
USAT Montserrat  
[www.usat.edu](http://www.usat.edu)  
Cell: 727-252-6210



Bill Reil <billreillaw@gmail.com>

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**sponsor note as it appeared until early January 2019**

1 message

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Orien Tulp <o.tulp@usat.edu>

Sun, Feb 10, 2019 at 7:46 PM

To: Bill Reil <billreillaw@gmail.com>, swatemd <swatemd@aol.com>, Carla Konyk - Director/Student Accounts <c.konyk@usat.edu>

- **Note: As of January 1, 2019, students and graduates of this medical school with a graduation year of 2019 and later are not eligible to apply to ECFMG for ECFMG Certification, which also renders them ineligible to apply to ECFMG for the United States Medical Licensing Examinations (USMLE) as a step toward ECFMG Certification.**
- **Currently, students and graduates of USAT are subject to enhanced procedures that must be met in order to be eligible to apply for ECFMG Certification related services, including but not limited to: ECFMG Certification, USMLE examinations that lead to ECFMG Certification, and Electronic Residency Application Service (ERAS®) Support Services. ECFMG will provide information and instructions to applicants upon receipt of application.**
- **Note: In 2018, ECFMG determined that certain staff / officials of the University of Science, Arts and echnology (USAT) engaged in irregular behavior in connection with providing false information and documents to ECFMG.**

Orien L Tulp, PhD, MD, FACN, CNS  
Professor and President  
USAT Montserrat  
[www.usat.edu](http://www.usat.edu)  
Cell: 727-252-6210

## LAW OFFICES OF WILLIAM C. REIL

BY: William C. Reil, Esquire

Identification No. 26833

1515 Market Street, Suite 1200

Philadelphia, PA 19102

215-564-1635

ATTORNEY FOR PLAINTIFF

Dr. Orien L. Tulp	:	UNITED STATES DISTRICT
President of the	:	COURT FOR THE EASTERN
University of Science, Arts, and Technology	:	DISTRICT OF PENNSYLVANIA
4288 Youngfield Street	:	
Wheat Ridge, CO 80033	:	CIVIL ACTION NO.
vs.	:	
Educational Commission for	:	
Foreign Medical Graduates	:	
3624 Market Street	:	
Philadelphia, PA 19104	:	
and	:	
Dr. William W. Pinsky	:	
President and CEO	:	
Educational Commission for	:	
Foreign Medical Graduates	:	
3624 Market Street	:	
Philadelphia, PA 19104	:	JURY TRIAL DEMANDED

**COMPLAINT – CIVIL ACTION****PARTIES**

1. The plaintiff is Dr. Orien L. Tulp, hereafter referred to as “Dr. Tulp”, an adult individual whose address for service of process is at 4288 Youngfield Street, Wheat Ridge, CO 80033. At all times material herein, plaintiff was President of the University of Science, Arts, and Technology (“USAT”), and had an ownership interest in the University. USAT is located in Montserrat, but its US administrative office is located at the address in the caption, and students take classes in Montserrat and the US via a distance education format.

2. A defendant is the Educational Commission for Foreign Medical Graduates, hereafter referred to as “ECFMG” or “the Board”, which is an unincorporated association, whose address for service of process is 3624 Market Street, Philadelphia, PA 19104. According to their mission statement, the ECFMG is an organization which purports to certify medical school students and graduates to practice medicine in the United States.



3. A defendant is Dr. William W. Pinsky, the President and CEO of the ECFMG, whose address for service of process is indicated in the caption. *See* Exhibit A, attached and incorporated herein.

4. ECFMG is an organization sponsored by various medical organizations, including the Federation of State Medical Boards. Through the ECFMG's certification process, it gives medical students and medical graduates a certification of eligibility (essentially a license) to apply for a ACGME [Accreditation Council for Graduate Medical Education] certified residency program of postgraduate specialty training that can lead to medical licensure of the applicant. A residency program is a certified program that trains students who have graduated from a medical school and taken a series of examinations or tests administered by way of the United States Medical Licensing Examination [the USMLE]. The state medical boards have given ECFMG the power to examine and certify international medical graduates [IMGs] as competent to undertake residency training in the USA. Without the certification (license) from the ECFMG, a foreign medical graduate cannot start the process of being licensed as a physician in the United States.

5. The action of the ECFMG is in granting authority to apply for a residency program is state action. The ECFMG's authority, which is in essence a license to apply for a residency program, has a close nexus to the various state medical boards. Without the ECFMG certificate, the ACGME postgraduate programs will not permit the applicant to start the training that will in essence allow the gate to be closed to obtaining a medical residency and eventual license to practice medicine in the USA. Without the residency training, the medical graduate cannot obtain a full unrestricted medical license. The state medical boards have granted the power to the ECFMG to screen foreign medical students for licensure. State action is established because of this delegation of screening power. *Jackson v. Metro Edison Co.*, 419 U.S. 345, 351.

6. The ECFMG has placed itself in a position of interdependence with the state medical boards. The ECFMG cannot be considered to be a private entity because the ECFMG reports to the state medical boards but also reports to the National Practitioner Data Bank. The ECFMG would not exist without the powers delegated by the state medical boards. *Burton v. Wilmington Parkway Authority*, 365 U.S. 715, 725 (1961).

7. Because the ECFMG's actions are delegated state actions, the ECFMG is required to give both procedural and substantive Fourteenth Amendment due process rights.

### **JURISDICTION AND VENUE**

8. The Court has jurisdiction under Diversity of Citizenship, the Civil Rights Act (42 U.S.C.A. 1983) and the Due Process clause of the United States Constitution, with pendent jurisdiction to consider any claims arising under state law.

9. Venue is properly before the Court, since all defendants are located and conduct business in the Eastern District of Pennsylvania.

### **SUMMARY**

10. In an attempt to close down the USAT and sanction Dr. Tulp, defendant ECFMG has refused to allow students of USAT to take necessary medical examinations. Defendant ECFMG has effectively closed USAT, by refusing to release scores for students who paid for the examinations. Doctors who graduated from USAT have been unable to commence their residency due to the refusal of the Board to issue an appropriate certification. ECFMG has also sent misleading "affidavits" to many USAT students and threatened many students with "irregular behavior" in order to sanction Dr. Tulp and force closure of the University, which he founded. He is President, CEO, and an equal owner of the University. Thus, ECFMG tortiously interfered with the educational contract between the students of USAT, the University, and Dr. Tulp, denied due process to Dr. Tulp and the students of USAT, and improperly used an "affidavit" [See Exhibit D] to coerce information from students. [Pinsky letter, See Exhibit A.] In addition, the Board placed information in the World Directory of Medical Schools, prior to any hearing or legal process, advising that it would no longer recognize the test scores of USAT graduates after January 1, 2019. See Exhibit B.

### **GENERAL ALLEGATIONS**

11. ECFMG sent to USAT a letter implying that the school would be closed on or about 01/01/19 because the Board would no longer recognize the scores of its students in taking the three-part United States Medical Licensing Examination. This action prohibits applicants from sitting for the USMLE, which is required for unrestricted medical licensure.

12. On 11/21/18, Kara Corrado, J.D., Vice President for Operations of the Board, sent a letter to counsel for USAT indicating two concerns: 1) that USAT's authority to conduct its medical education program amounted to "irregular behavior" because USAT had not been certified by a governmental entity in the United States, and 2) the allegation that USAT was operating medical school campuses in the United States. See Exhibit E. On October 18, 2018, Lisa Cover, a Senior Vice President with ECFMG, wrote a letter to Dr. Tulp advising him of the allegation that he engaged in "irregular behavior". See Exhibit F.

13. USAT has a certification from the government of Montserrat, allowing it to operate temporary venues due to an active volcano on the island. Such certification had been recognized by the Board without incident since 2003. USAT also operates online courses for the majority of its basic sciences course requirements via a specially developed SPOC [small platform online courses, developed by USAT]. A true and correct copy of the certification from Montserrat is attached and incorporated as Exhibit C.

14. Students from USAT have each paid well over \$1,000 to the Board to take necessary medical exams, and the Board has refused to release their scores because of

alleged misconduct by Dr. Tulp, and an assignment by the Board of “irregular behavior” arising out of an illegal affidavit issued to students of USAT. “Irregular behavior” may be a permanent admonition on a student or physician’s official record, and make residency difficult, if not impossible.

15. The Board set up a hearing on 11/28/18 for Dr. Tulp, only, in Philadelphia, at the address in the caption to address so-called “irregular behavior”. After a few minutes, with no witnesses called, Board counsel announced that the hearing was terminated. Prior to the hearing, the Board took the position that Dr. Tulp had the burden of proof on the issue of “irregular behavior” for which he had been charged by the Board. The Board set 20 minutes as the duration of the hearing. No testimony was taken or exhibits received in evidence, before Board counsel terminated the hearing. No Transcript of the proceedings has been received. The Board indicated that on 01/01/19 it will issue a finding of “irregular behavior” to Dr. Tulp effectively closing USAT.

16. There was no jurisdiction over, or relationship with, Dr. Tulp to compel him to attend the hearing by the Board, and he made a special appearance while not agreeing to jurisdiction. ECFMG has no jurisdiction over Dr. Tulp, or legal relationship with Dr. Tulp, or the power to enter any sanction against him. The Board has no contractual or statutory authority over Dr. Tulp.

17. The Board would not give Dr. Tulp sufficient discovery to conduct an adequate defense. Also, the Board has never requested any curricula, student records, or any documentation from USAT.

18. The term “irregular behavior” is void for vagueness, since “irregular behavior” is so broad that it essentially amounts to any behavior which the Board does not approve. There is no intelligible standard to ascertain “irregular behavior” with the exception of the fiat by the ECFMG. There is no due process mechanism to effectively challenge a finding of “irregular behavior” which can amount to an indefinite suspension of United States medical licenses by the Board without formal notification of such assignment to the individual concerned.

19. There is no reasonable way to ascertain the standards for “irregular behavior” in the instant case, prior to any adjudication.

20. The Board has effectively closed USAT by not allowing its students and graduates to complete the necessary medical examinations beyond January 1, 2019, and has tortiously interfered with the relationship of the students of USAT and Dr. Tulp, the President of the University.

**FIRST CAUSE OF ACTION**  
**Plaintiff v. ECFMG**

21. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

22. This cause of action is for the illegal actions of the ECFMG (the Board) in tortiously interfering with the contract between the students of USAT and plaintiff Dr. Orien Tulp, the University President and co-owner.

23. The Board allegedly refused to release scores of necessary medical exams to students and graduates of USAT, de facto, closing the University.

24. The Board published, in the World Directory of Medical Schools, a warning to students that it would not recognize USAT with respect to necessary medical qualifying examinations after January 1, 2019. *See* Exhibit B.

25. The Board sent illegal “affidavits” to students in an attempt to intimidate them from continuing as students at USAT. These alleged affidavits threatened medical students with perjury, as well as “irregular behavior”, and also directed the students to provide certain documentary evidence, such as a copy of their passport. This “affidavit” by the Board was an abuse of process, and constituted fraudulent or negligent representation, since it was tantamount to a “subpoena duces tecum” without first having a legal proceeding. The Board had no power to issue these so-called affidavits. These affidavits are also a violation of Federal Education Records Protection Act (FERPA). Students are predominantly US citizens and are entitled to such protection under FERPA.

26. The purpose of the ECFMG doing this was to effectively remove Dr. Tulp as President of the University by discouraging students from registering or continuing their education at USAT, including verbal recommendations from ECFMG case workers. The Board issued “affidavits” and threatened to find students of USAT guilty of “irregular behavior”.

27. There was no hearing before the students of USAT were sent emails by the ECFMG telling them that they may have been assigned “irregular behavior” and that their scores would not be released to medical institutions to be accepted for residency applications or other ECFMG services.

28. ECFMG alleges to be a private organization which permits the administration of qualifying examinations for foreign medical students and international medical graduates and passes information to the state licensing agencies in the United States. De facto, the ECFMG is a quasi-governmental agency that issues certificates, that are essentially licenses, to foreign medical students and physicians upon completion of their certification process, and it holds itself out to medical students and others as a governmental entity

29. As a result of the illegal actions of the Board in refusing to release the scores of the students of the plaintiff, the plaintiff has suffered, and will continue to suffer, irreparable harm including, but not limited to, the immediate closing of USAT College of Medicine and the removal of Dr. Tulp as a medical educator under the cloud of an indefinite sentence of “irregular behavior” for a duration of not less than 5 years.

30. Dr. Tulp will also suffer loss of his position as President of the University, as well as direct monetary damages resulting from the closing of USAT, arising out of the actions of ECFMG to close USAT, and to preclude its students from practicing medicine or engaging in postgraduate training in the USA, and the discouraging of any students from attending an institution where they cannot receive required certification from the ECFMG Board to qualify for licensure or registration to practice medicine in the USA.

WHEREFORE, the Court is requested to order ECFMG to immediately resume processing the medical examinations of students of USAT, and release their examination scores, and remove the negative advisory from the sponsor notes on the World Directory of Medical Schools listing for the USAT College of Medicine, and to award such other injunctive and equitable relief as appropriate, plus damages, interest, and attorney fees.

**SECOND CAUSE OF ACTION**  
**Plaintiff v. ECFMG**

31. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

32. This cause of action is for violation of due process by the ECFMG (the Board).

33. The Board violated the due process rights of Dr. Tulp by finding him guilty of “irregular behavior” when it had no jurisdiction over Dr. Tulp, or any direct contact with him prior to a finding of “irregular behavior”.

34. The Board violated the due process rights of Dr. Tulp by illegally withholding necessary medical examination for USAT students and graduates in an attempt to sanction plaintiff and to force closure of USAT.

35. The Board violated the due process rights of Dr. Tulp by sending misleading affidavits to students of USAT, which affidavits were illegal and designed to intimidate the students from attending USAT. The Board stated that as January 1, 2019, students of USAT may not apply to ECFMG for certification. Essentially, the Board engaged in an illegal scheme to destroy USAT and Dr. Tulp by publishing the demise of the University in the World Directory of Medical Schools before any notification of such intent by the ECFMG.

36. The Board violated the due process rights of Dr. Tulp by failing to award him or the students of his college a legitimate hearing before taking adverse action. The Board commingled the adjudicatory and investigative functions, particularly through the use of

affidavits sent to students to secure documentary evidence under the threat of “irregular behavior”. *See Lyness v. Com., State Bd. Of Medicine* 529 Pa. 535 (1992).

37. ECFMG is estopped from denying that it is a governmental or quasi-governmental entity, *inter alia*, because no disclaimer that it was a private entity to that effect was placed on the affidavits sent to thousands of USAT students. In point of fact, the opposite was implied.

38. The Board has acted as a governmental entity, and is estopped from denying the same.

39. When the Board corresponded with USAT and with its students, there was no disclaimer that the Board was not acting on behalf of any governmental authorization, or that it was allegedly a private entity, and the students were not required by law to respond to the affidavit or provide any documents. Students were required to complete “affidavits” under penalty of a finding of “irregular behavior” and denial of ECFMG services.

40. Under the doctrine of state action, the Board has failed to exercise due process in its dealings with USAT and its students as is required by the Due Process Clause of the Pennsylvania and US Constitutions.

41. The Board has failed to show due process to USAT students, as heretofore mentioned. The affidavits indicated that the Board has illegally commingled the adjudicatory and prosecutorial functions, in violation of due process.

42. As a result of the Board acting as a quasi-governmental entity, Dr. Tulp and his University suffered the damages as previously enumerated.

WHEREFORE, the Court is requested to order ECFMG to immediately resume processing the medical examinations of students of USAT, and release their examination scores, and remove the negative advisory from the sponsor notes on the World Directory of Medical Schools listing for the USAT College of Medicine, and to award such other injunctive and equitable relief as appropriate, plus damages, interest, and attorney fees.

**THIRD CAUSE OF ACTION**  
**Plaintiff v. ECFMG**

43. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

44. This is a cause of action for fraudulent misrepresentation, abuse of process, and negligent representation against the ECFMG (the Board).

45. As heretofore indicated, the Board committed the aforementioned torts through the following acts and omissions:



- (a) representing itself as an official governmental agency;
- (b) distributing affidavits to intimidate USAT students, which affidavits did not have a disclaimer or conform to law;
- (c) placing misleading information about USAT into the World Directory of Medical Schools without notice, and which was designed to intimidate students and to effectively force closure of USAT;
- (d) using illegal affidavits whose purpose was to gather documents and evidence of alleged culpable behavior by USAT and Dr. Tulp, all of which was in violation of FERPA, the Family Educational Rights and Privacy Act;
- (e) violating FERPA by not receiving the requisite consent of students to their educational records.

46. As indicated in the prior counts, the Board has held itself out as a governmental agency. The Board has never indicated to those that it dealt with, in particular the students, that it is not an official governmental agency.

47. Accordingly, the Board is estopped by its conduct to deny that it is required to show due process, as if it were a governmental entity.

WHEREFORE, the Court is requested to order ECFMG to immediately resume processing the medical examinations of students of USAT, and release their examination scores, and remove the negative advisory from the sponsor notes on the World Directory of Medical Schools listing for the USAT College of Medicine, and to award such other injunctive and equitable relief as appropriate, plus damages, interest, and attorney fees.

**FOURTH CAUSE OF ACTION**  
**Plaintiff v. All Defendants**

48. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

49. This cause of action arises out of the 12/14/18 letter by Dr. William W. Pinsky, which is attached and incorporated as Exhibit A.

50. Dr. Pinsky is the President and CEO of the ECFMG, and in that capacity, he authorized the illegal actions of the ECFMG, heretofore described.

51. On 12/14/18, Dr. Pinsky sent a letter [Exhibit A] to Dr. Orien L. Tulp, addressing him as Professor and President of USAT at its main location in Montserrat.

52. In this letter, Dr. Pinsky indicated, *inter alia*, essentially, that the ECFMG Committee had determined that, for a minimum period of five years, from the date of the letter, that Dr. Tulp was banned from submitting any documents or having any dealings with the ECFMG on behalf of USAT or otherwise.

53. This indefinite ban of Dr. Tulp for allegedly engaging in “irregular behavior” was arbitrarily imposed by the ECFMG Committee for alleged unproven false statements, none of which allegations were actually documented.

54. This ban effectively precludes Dr. Tulp from operating, or being involved with, any medical school, in any capacity, for an indefinite period of time, subject to the unfettered discretion of ECFMG.

55. This ban effectively closes USAT, as an institution for medical students, for an indefinite period of time, if not permanently.

56. Actions which allegedly are announced in Dr. Pinsky’s letter have already been instituted by the ECFMG such as the ban on the World Directory of Medical Schools website and the shutdown of the portal and the blocking of student scores and the affidavits.

57. The ban by the ECFMG, as set forth in the letter of Dr. Pinsky, also means that the operations of the USAT in the United States must be shut down, and the students from the United States will be separated from USAT, which will have to be closed if the actions of the ECFMG are not reversed. Two of the three administrative conference venues have been closed due to the actions of the ECFMG. Students have been forced to transfer to other medical schools to continue their education past January 1, 2019. As previously mentioned, the bulk of the USAT Basic Sciences Program is delivered via an advanced SPOC [Small Program Online Course program developed by USAT and delivered worldwide, thereby negating any requirement for a fixed US Campus]. The ECFMG or Dr. Pinsky has never asked for any information about the structure or content of the Basic Sciences Program.

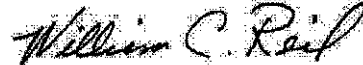
58. The actions of the ECFMG on Dr. Tulp and the students of USAT amount to a violation of procedural and substantive due process, as follows:

- (a) banning Dr. Tulp without a proper hearing;
- (b) banning Dr. Tulp without an evidentiary basis;
- (c) forcing closure of USAT and causing its students to be dismissed in an arbitrary and capricious manner;
- (d) requiring, at a hearing on 11/28/18, that USAT assume the burden of proof and allotting 20 minutes for the hearing;
- (e) terminating the hearing on 11/28/18 without receiving any evidence from Dr. Tulp;
- (f) finding Dr. Tulp guilty of “irregular behavior” without jurisdiction and due process, and effectively forcing closure of USAT College of Medicine without legal process, and constructively dismissing the students of USAT in violation of the law.



WHEREFORE, the Court is requested to order ECFMG to immediately resume processing the medical examinations of students of USAT, and release their examination scores, and remove the negative advisory from the sponsor notes on the World Directory of Medical Schools listing for the USAT College of Medicine, and to award such other injunctive and equitable relief as appropriate, plus damages, interest, and attorney fees.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William C. Reil". The signature is stylized with a large, looped "W" and a cursive "Reil".

William C. Reil, Esquire  
FOR: Tommy Swate, Esquire  
Attorneys for Plaintiff  
File I.D. No. WCR1962  
Attorney I.D. No. 26833  
1515 Market Street, Suite 1200  
Philadelphia, PA 19102  
215-564-1635

December 24, 2018

# **EXHIBIT A**



EDUCATIONAL COMMISSION FOR  
FOREIGN MEDICAL GRADUATES

3624 Market Street  
Philadelphia PA 19104-2685 USA  
215-386-5900 | 215-386-9767 Fax  
www.ecfmg.org

PERSONAL AND CONFIDENTIAL  
VIA EMAIL: [o.tulp@usat.edu](mailto:o.tulp@usat.edu)

December 14, 2018

Dr. Orien L. Tulp  
Professor and President  
University of Science, Arts & Technology (USAT) Faculty of Medicine  
Main Campus  
S. Mayfield Estate Drive  
Olveston  
MONTSERRAT

Dear Dr. Tulp:

I am writing to inform you that the ECFMG Medical Education Credentials Committee ("ECFMG Committee") has completed its review of the allegation that you, individually and in your capacity as an official of University of Science, Arts & Technology (USAT) Faculty of Medicine, Montserrat, engaged in irregular behavior in connection with providing false information to ECFMG. Specifically, you provided false information to ECFMG when you (1) notified ECFMG that USAT does not operate a branch campus in Miami, FL and (2) certified to the attendance dates of several USAT students and graduates when ECFMG has information that these students were not attending USAT during some of the time periods to which you certified.

In advance of the review, the members of the ECFMG Committee were provided with the documents listed in ECFMG's October 18, 2018 letter and ECFMG's November 14, 2018 emails. A hardcopy of the complete file was also sent to your attorney, Mr. Tommy Swate, on November 16, 2018 via Federal Express. On November 16, 2018, Mr. Swate acknowledged receipt of this complete file. You made a personal appearance before the ECFMG Committee accompanied by your legal counsel, Mr. Swate. A copy of the transcript of the proceedings will be sent to you as soon as it is available.

The ECFMG Committee considered the documentation presented to it and Mr. Swate's statements. Following careful review, the ECFMG Committee determined that you engaged in irregular behavior in connection with providing false information to ECFMG.

The ECFMG Committee has determined that ECFMG will not accept any documents signed / certified by you for ECFMG on behalf of USAT, or any other medical school, for a minimum of five years from today; thereafter, the prohibition shall end only upon a petition to ECFMG conclusively demonstrating to the satisfaction of the ECFMG Committee a familiarity with, and willingness to adhere to, ECFMG policies. Your ECFMG Medical School Web Portal (EMSWP) account will remain deactivated.

In light of the ECFMG Committee's findings, the ECFMG Sponsor Note for USAT in the *World Directory of Medical Schools (World Directory)* will be updated as follows:

Dr. Orien L. Tulp  
December 14, 2018  
Page 2 of 2

*In 2018, ECFMG determined that a certain official of the University of Science Arts & Technology engaged in irregular behavior in connection with providing false information to ECFMG.*

This note will remain in USAT's ECFMG Sponsor Note in the *World Directory* for five years, regardless of whether USAT changes its name, ownership, and/or location.

Additionally, in accordance with the ECFMG *Policies and Procedures Regarding Irregular Behavior*, a permanent annotation that you engaged in irregular behavior will be included in your ECFMG record. ECFMG may report the ECFMG Committee's determination of irregular behavior to the Federation of State Medical Boards of the United States, U.S. state and international medical licensing authorities, directors of graduate medical education programs, and to any other organization or individual who, in the judgment of ECFMG, has a legitimate interest in such information.

As noted in the enclosed ECFMG *Rules of Appellate Procedure*, decisions of the ECFMG Medical Education Credentials Committee may be appealed within the 30-day time period specified.

Sincerely,

A handwritten signature in black ink, appearing to read "William W. Pinsky".

William W. Pinsky, MD FAAP FACC  
President and CEO

CC: Tommy Swate, Esq. [swatemd@aol.com](mailto:swatemd@aol.com)  
William Reil, Esq. [billreillaw@gmail.com](mailto:billreillaw@gmail.com)

Encl: As noted.

**EXHIBIT B**

# University of Science, Arts & Technology (USAT) Faculty of Medicine

Montserrat

School Details

Contact Information

Program Details

Sponsor Notes

The information below has been provided by the World Directory's sponsoring organizations.

- Students and graduates of this medical school are eligible to apply to ECFMG for ECFMG Certification and for examination, provided that:
  - For medical school students officially enrolled in this school, the graduation years are listed below as "current".
  - For graduates of this medical school, their graduation year is included in the graduation years listed below.

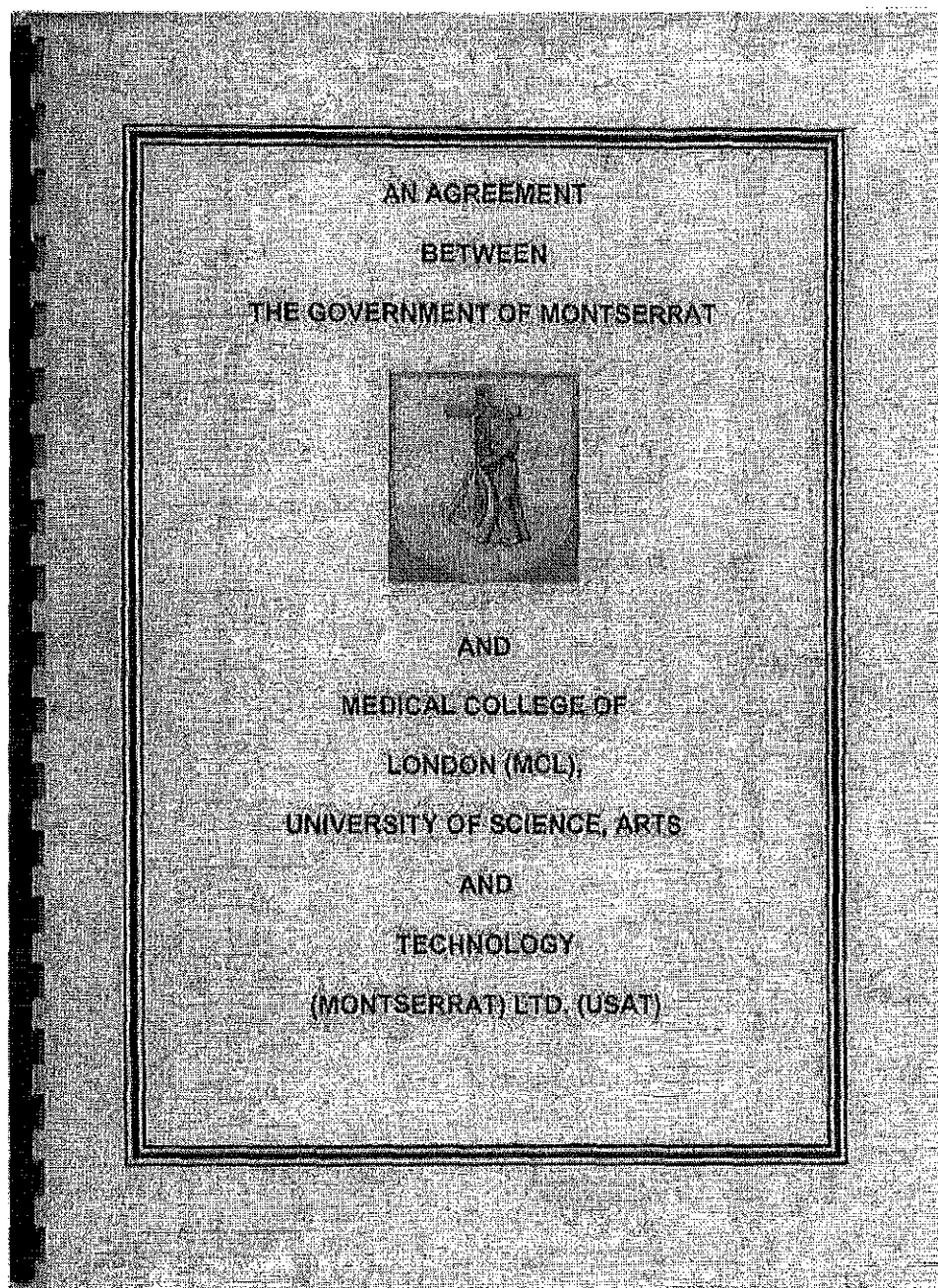
Graduation Years:

2003 - 2018

- All other eligibility requirements are met. Refer to the ECFMG Information Booklet for detailed information.
- **Note: As of January 1, 2019, students and graduates of this medical school with a graduation year of 2019 and later are not eligible to apply to ECFMG for ECFMG Certification, which also renders them ineligible to apply to ECFMG for the United States Medical Licensing Examinations (USMLE) as a step toward ECFMG Certification.**
- **Currently, students and graduates of USAT are subject to enhanced procedures that must be met in order to be eligible to apply for ECFMG Certification related services, including but not limited to: ECFMG Certification, USMLE examinations that lead to ECFMG Certification, and Electronic Residency Application Service (ERAS®) Support Services. ECFMG will provide information and instructions to applicants upon receipt of application.**

# EXHIBIT C







## MONTSERRAT

A.D. 2003

## AGREEMENT

THIS AGREEMENT made the 24<sup>th</sup> day of September, 2003 between:

THE GOVERNMENT OF MONTSERRAT (hereinafter referred to as "the Government" which expression shall where the context so admits include its assigns and successors) whose address for service is THE CHIEF MINISTER'S OFFICE, BRADES, MONTSERRAT and MEDICAL COLLEGE OF LONDON (MCL), UNIVERSITY OF SCIENCE, ARTS AND TECHNOLOGY (Montserrat) LTD (USAT), a duly incorporated company (hereinafter referred to as "the MCL-USAT" which expression shall where the context so admits include its assigns and successors) whose address is BRADES, Montserrat.

WITNESSETH AS FOLLOWS:-

1. DEFINITIONS

In this agreement the following expressions shall have the meaning herein ascribed to them.

"Agreement Period" means a period of 20 years commencing with the date on which this agreement is executed. The MCL-USAT will have the option to review and renew the Agreement.

"Contributions" means a contribution payable to the Social Security Fund.

"Expatriate Staff" means staff recruited from overseas who are not citizens of Montserrat or are not ordinarily resident in Montserrat for tax purposes.

"USAT" means UNIVERSITY OF SCIENCE, ART AND TECHNOLOGY (MONTSERRAT) LTD.

2. TAX EXEMPTIONS

(1)

3. WORK PERMIT FOR EXPATRIATE EMPLOYEES

3.1 MCL-USAT will at the beginning of each year of the agreement period provide a list of names of its academic and administrative staff requiring work permits and in addition shall supply all relevant information needed for the processing of the work permits.

3.2 Government of Montserrat shall issue the necessary work permits and visas to enable MCL-USAT staff, students and families to remain on island for the period of their employment or study subject to the significance of any information provided on Police Records.

7.2 MCL-USAT will ensure that income tax is paid in respect of each of its employees.

D. GENERAL

8.1 The Government undertakes to establish a registry to record certification obtained by medical graduates of MCL-USAT.

8.2 The Government of Montserrat will at the request of MCL-USAT request the listing of MCL-USAT with the World Directory of Medical Schools published by WHO, Geneva, Switzerland.

8.13 MCL-USAT agrees to maintain operations in Montserrat with regard to its Medical and other Programmes for the duration of the agreement unless unforeseen circumstances and/or natural disaster arise that the MCL-USAT may choose to relocate to an area of convenience for the MCL-USAT for a time period to be determined by MCL-USAT. This would not affect any permission granted to the MCL-USAT by the Government of Montserrat.

8.14 The MCL-USAT may grant academic and professional degrees to duly qualified students of the institution and commensurate with an institution of higher education who have completed the academic and professional requirements of the degree for which they have been considered, and who have been recommended for such by the faculty and directors of MCL-USAT. The specific degrees authorized shall include Doctor of Philosophy (Ph.D.), the Doctor of Medicine (M.D.) or Bachelor of Surgery (M.B.B.S.), Bachelor of Dental Surgery (B.D.S.), the Master of Public Health (M.P.H.), the Master of Science (M.Sc.), the Master of Arts (M.A.), the Bachelor of Science (B.Sc.) and the Bachelor of Arts (B.A.).

IN WITNESS whereof the parties or the duly authorized representative of the parties have signed this Deed on the day first above written.



Signed by Mr. John A. Osborne  
Minister for Finance and  
Economic Development on behalf  
of the Government of Montserrat



Dr. Chen L. Tup  
President, USAT, and Director  
Medical College of London

Before and in the presence of:



Esau Henry Groer  
Attorney General

Before and in the presence of:





Esau Henry Groer  
Attorney General

9.5 At the end of the agreement period MCL-USAT shall have the option to extend the agreement for a further period to be determined by MCL-USAT and GOM.

9.6 Notwithstanding the above, the offer included in this agreement shall be valid for a period of one (1) year from the date of this agreement after which the terms and conditions may be subject to re-negotiation however, if MCL-USAT makes any substantial property investment or undertakes any major contractual obligation referable to and in reliance on this Agreement, then the terms set out shall become final and binding on the Government.

IN WITNESS whereof the parties or the duly authorized representative of the parties have signed this Deed on the day first above written.

  
Signed by Mr. John A. Osborne  
Minister for Finance and  
Economic Development on behalf  
of the Government of Montserrat

  
Dr. Olan T. Tulp  
President, USAF, and Director  
Medical College of London

Before and in the presence of

  
Esco Henry Greer  
Attorney General

Before and in the presence of

  
Esco Henry Greer  
Attorney General

COMPANY NO.

**COMPANIES ACT OF MONTSERRAT**

**CERTIFICATE OF INCORPORATION**

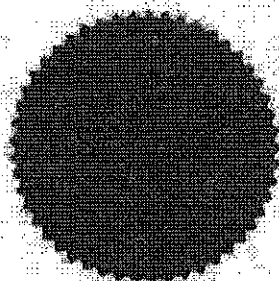
**UNIVERSITY OF SCIENCE, ARTS  
AND TECHNOLOGY (MONTSERRAT) LTD.**

**NAME OF COMPANY**

I hereby certify that the above mentioned Company, the Articles of Incorporation of which are attached, was incorporated under the Montserrat Companies Act 1996.

  
Registrar of Companies

18<sup>th</sup> September 2003  
Date of Incorporation



**EXHIBIT D**



**ECFMG**

Case 2:18-cv-05540-WB Document 1 Filed 12/24/18 Page 23 of 32

EDUCATIONAL COMMISSION FOR  
FOREIGN MEDICAL GRADUATES3624 Market Street  
Philadelphia, PA 19104-2685 USA  
215-386-5900 | 215-386-9767 Fax  
www.ecfm.org**AFFIDAVIT ATTESTING TO MEDICAL SCHOOL ATTENDANCE**

I, \_\_\_\_\_

ECFMG Applicant Name

ECFMG ID Number \_\_\_\_\_

hereby declare, under penalty of perjury under the laws of all applicable jurisdictions, including the United States of America, and under penalty of a finding of irregular behavior under applicable ECFMG rules and regulations, that:

**Section 1: Attendance Dates at University of Science, Arts & Technology (USAT) Faculty of Medicine**

I attended University of Science, Arts &amp; Technology (USAT) Faculty of Medicine located in Montserrat during the following dates:

From (Month/Year)	To (Month/Year)

**Section 2: Dates and Location of Basic Sciences Courses Taken in Montserrat**

I was physically present and took basic sciences courses in Montserrat, during the following dates and at the following location (If you did not complete your basic sciences course work at a facility located in Montserrat, complete Section 3):

Dates of Basic Sciences Courses Taken while Physically Located in Montserrat		
(Do not include dates if you were not physically present in Montserrat. Do not include breaks in time where you were not physically located in Montserrat. Only list the beginning and end date for when you were physically present in Montserrat attending basic sciences courses.)		
From (Month/Year)	To (Month/Year)	Address of Facility Where Basic Sciences Classes Were Held

While I took my basic sciences classes in Montserrat, I resided at the following location(s):

Residence Address in Montserrat	Residence Dates in Montserrat	
	From (Month/Year)	To (Month/Year)

I am attaching the following documentation to demonstrate my physical presence in Montserrat during the time I was taking basic sciences classes at University of Science, Arts & Technology (USAT) Faculty of Medicine. (check all that apply):

- ☐ My passport, showing travel to Montserrat and visas for Montserrat
 ☐ My lease, utility bills, etc. for my housing  
☐ My airline tickets/boarding passes documenting travel to Montserrat
 ☐ Other (please specify)

**Section 3: TO BE COMPLETED ONLY IF YOU CANNOT COMPLETE SECTION 2**

I did not take basic sciences courses at a facility located in Montserrat because \_\_\_\_\_

I also declare that this information is comprehensive, complete and accurate as of the date of my signature.

Signature of Applicant \_\_\_\_\_

(day) (month) (year)

**Certification by Official**

I certify that on the date set forth below the individual named above did appear personally before me and that the statements in this document are subscribed and sworn to before me by the individual on this \_\_\_\_ day, of the month of \_\_\_\_ in the year \_\_\_\_.

Signature of Notary Public \_\_\_\_\_

Printed Name of Official \_\_\_\_\_

Official Seal

**WHAT YOU NEED TO DO**

Effective immediately, as a USAT student or graduate seeking a service or services related to ECFMG Certification, including registration for the United States Medical Licensing Examination (USMLE), release of USMLE scores, issuance of an ECFMG Certificate, or issuance of ECFMG Certification Status Reports to residency programs, you must complete the attached affidavit, attesting to the accuracy of your medical school attendance information to ECFMG's satisfaction. Completion of the affidavit is required and will facilitate ECFMG's review.

The affidavit must also be notarized by NotaryCam, which provides secure on-line notarization of documents. To use NotaryCam, go to <https://www.notarycam.com/ecfm-g-affidavit/> and follow NotaryCam's instructions. NotaryCam will e-mail your affidavit to ECFMG directly.

**YOU MUST COMPLETE AND SUBMIT THIS AFFIDAVIT NO LATER THAN NOVEMBER 1, 2018.**

Please allow two to four weeks processing time after the above-described affidavit has been submitted to ECFMG. ECFMG will notify you in writing after your affidavit has been processed.

ECFMG reserves the right to bring allegations of irregular behavior against you, in accordance with its policies and procedures, should ECFMG obtain information that indicates that you have engaged in irregular behavior with respect to any documentation submitted as part of this process.

If you have any questions, please contact [MECCsupport@ecfm-g.org](mailto:MECCsupport@ecfm-g.org) and you will be assigned a Case Manager. If you prefer, you may call 215-386-5900 and ask to be transferred to a Case Manager for USAT.

Sincerely,

ECFMG

---

**EXHIBIT E**





EDUCATIONAL COMMISSION FOR  
FOREIGN MEDICAL GRADUATES

3624 Market Street  
Philadelphia PA 19104-2685 USA  
215-386-5900 | 215-386-9767 Fax  
[www.ecfm.org](http://www.ecfm.org)

VIA EMAIL: [swatemd@aol.com](mailto:swatemd@aol.com)

November 21, 2018

Mr. Tommy Swate  
Attorney at Law  
403 Wild Plum  
Houston, Texas 77013

Dear Mr. Swate:

Thank you for the email confirmation on November 16, 2018 that you received the complete file that will be reviewed by the ECFMG Medical Education Credentials Committee ("ECFMG Committee") in the matter related to Dr. Orien Tulp. As previously communicated, Dr. Tulp is scheduled to make a personal appearance (accompanied by you and Mr. Reil, his attorneys) before the ECFMG Committee on Wednesday, November 28, 2018 at 9:00 AM at the Rittenhouse Hotel, 210 West Rittenhouse Square, Philadelphia, PA 19103. Please arrive with Dr. Tulp at 8:45 AM.

I am writing in response to your letter dated November 13, 2018, which is rife with misstatements. There are two important issues of concern which require clarification at this time: (1) ECFMG's authority to conduct its activities, including the ECFMG Certification program and making allegations of irregular behavior pertaining to Dr. Tulp; and (2) the "activity of the ECFMG in regards to the USAT" related to ECFMG's update of USAT's *World Directory of Medical Schools* ECFMG Sponsor Note.

**Concern (1): ECFMG's Authority to Conduct the ECFMG Certification Program & Irregular Behavior**

In your letter, you request ECFMG to "identify by what legal authority [ECFMG] has to claim and report that Dr. Tulp - engaged in 'irregular behavior'." For some additional context regarding ECFMG's responsibility and its mission to protect the public, ECFMG (formally the Evaluation Service for Foreign Medical Graduates) was established as a private, non-profit organization in 1956 by the Federation of State Medical Boards (FSMB), the American Hospital Association (AHA), the Association of American Medical Colleges (AAMC), and the American Medical Association (AMA). It was established to validate medical credentials, assess basic medical knowledge and determine English language proficiency for graduates of international medical schools. As you may already know, medical licensing authorities in the United States require that international medical graduates (IMGs) be certified by ECFMG, among other requirements, to obtain an unrestricted license to practice medicine.

In support of its mission to protect the public, individuals that have or have attempted to subvert ECFMG's policies and procedures are subject to ECFMG's Policies and Procedures on Irregular Behavior. These were previously shared with you and are also available on ECFMG's web-site at <https://www.ecfm.org/programs/irregular-behavior.html>. As communicated in our prior correspondence, it is under these policies that Dr. Tulp is charged with irregular behavior for providing false information to ECFMG. I trust that the files you received on November 16 help clarify the charges and evidence of irregular behavior.

Mr. Tommy Swate  
November 21, 2018  
Page 2 of 2

**Concern (2): ECFMG's Update to USAT's World Directory ECFMG Sponsor Note**

As previously communicated to you, ECFMG's update to USAT's World Directory Sponsor note is **not** related to a charge of irregular behavior for Dr. Tulp.

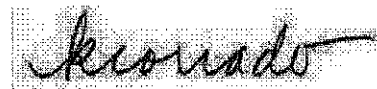
ECFMG updated its sponsor note on October 18, 2018 because ECFMG learned that USAT was operating a medical school campus located in the United States. Before taking this action, ECFMG had requested USAT to provide documentation from the appropriate United States authorities that USAT is authorized to operate its medical school campuses and educational programs in the United States. To date, USAT has failed to deliver such documentation.

It appears from the information gathered from you (e.g. your statement that USAT has conducted classes "in locations other than Montserrat for 15 years without incident...") and corroborated by USAT students that USAT has primarily operated and conducted its educational activities in the United States. Based on this information, USAT may not even be an international medical school. However, as previously communicated, if you are able to provide documentation from the appropriate United States authorities that USAT is authorized to operate its medical school branch campuses in the United States, ECFMG will consider this information.

Also, in your letter dated November 13, 2018 you state "ECFMG has taken the position that ECFMG has the right to accredit a medical school." We must clarify for you that ECFMG is not an accrediting agency and does not purport to accredit international medical schools. ]

Please contact me if you have any additional questions regarding our ECFMG Committee meeting scheduled next week.

Sincerely,



Ms. Kara Corrado, JD  
Vice President for Operations

# **EXHIBIT F**



EDUCATIONAL COMMISSION FOR  
FOREIGN MEDICAL GRADUATES

3624 Market Street  
Philadelphia PA 19104-2685 USA  
215-386-5900  
www.ecfm.org

PERSONAL AND CONFIDENTIAL  
VIA EMAIL: [o.tulp@usat.edu](mailto:o.tulp@usat.edu)

October 18, 2018

Dr. Orien L. Tulp  
Professor and President  
University of Science, Arts & Technology (USAT) Faculty of Medicine  
Main Campus  
S. Mayfield Estate Drive  
Olveston  
MONTSERRAT

Dear Dr. Tulp:

I am writing to advise you of the allegation that you, individually and in your capacity as an official of the University of Science, Arts & Technology (USAT) Faculty of Medicine, Montserrat, engaged in irregular behavior in connection with providing false information to ECFMG. Specifically, you provided false information to ECFMG when you (1) notified ECFMG that USAT does not operate a branch campus in Miami, Florida and (2) certified to the attendance dates of several USAT students and graduates when ECFMG has information that these students were not attending USAT during some of the time periods to which you certified. The details of ECFMG's allegation are set forth below.

#### **Details of Allegation**

##### ***False Information Regarding U.S. Branch Campuses***

On August 21, 2018, ECFMG advised you that we had become aware that USAT was operating a "branch" campus in Miami, Florida. We advised you that in order for students and graduates of an international medical school, such as USAT, to have eligibility to apply for ECFMG Certification, ECFMG policy requires confirmation from the appropriate government authority in the branch campus country that the branch campus is authorized to operate as a medical school in such branch campus country. Therefore, we requested that USAT provide documentation from the United States Department of Education and/or the Florida Department of Education confirming that USAT's Miami branch campus is authorized to operate as a medical school in the United States. We indicated that this documentation should cover the whole time period that the USAT Miami branch campus has been in operation.

In response to ECFMG's August 21, 2018 letter, you replied:

"This is incorrect information. The Miami location is an information and testing site only, where a pre-usmle examination [an NBME] may administered, and an Orientation for new students is conducted prior to their traveling to the

Dr. Orien L. Tulp  
October 18, 2018  
Page 2 of 4

Caribbean.. It is NOT a campus. Our ONLY Campus is located in Olveston, Montserrat, British West Indies.

Actually, recall that Montserrat is a volcanic Island, and the license issued to USAT in September, 2003 DOES actually permit the establishment of off-campus lecture and administrative sites as needed. USAT has students on island on a year round basis since its origination." [emphasis in original]

After receiving your reply, ECFMG received information that USAT was also providing medical education lectures not only at its Miami site, but also at sites in Tampa, Florida, Dallas, Texas, and Puerto Rico. As a result and to ensure that information regarding international medical schools and their students provided to ECFMG complies with ECFMG policies and requirements, ECFMG notified you that ECFMG would require USAT students and graduates to complete an affidavit, attesting to the accuracy of the medical school information provided to ECFMG.

In response to ECFMG's affidavit request, many USAT students and graduates have certified that they have not completed any courses on Montserrat, but instead completed courses on site in the United States at the direction of USAT officials due to volcanic and hurricane activity on Montserrat. ECFMG also received a copy of the "2018 University of Science, Arts and Technology Lecture Conference Schedule" which shows lectures occurring in Florida and Texas. We note that there are no lectures scheduled for Montserrat. We also note that graduation occurs in Miami, Florida.

This directly conflicts with the information that you provided, i.e. that "the Miami location is an information and testing site only, where a pre-usbme examination [an NBME] may administered, and an Orientation for new students is conducted prior to their traveling to the Caribbean.. It is NOT a campus. Our ONLY Campus is located in Olveston, Montserrat, British West Indies." [emphasis in original]. Further, though USAT's agreement with the Montserrat government indicates that USAT "agrees to maintain operations in Monserrat with regard to its Medical and other programmes for the duration of the agreement unless unforeseen circumstances and/or natural disaster arise that the MCL-USAT may choose to relocate to an area of convenience for the MCL-USAT for a time period to be determined by MCL-USAT. This would not effect any permission granted to MCL-USAT by the government of Montserrat," ECFMG has no record of receipt of any official communication from you or any other USAT official indicating that USAT relocated due to volcanic activity, from 2003 until present.

In ECFMG's September 15, 2017 announcement "Relocation of Caribbean Medical Schools Impacted by Hurricane Irma" ECFMG advised: "Schools that have relocated or plan to relocate their operations to the United States or elsewhere as a result of Hurricane Irma should provide ECFMG with: a) a formal notice to ECFMG that includes the address of where the school is temporarily located and the expected date of when the school will return to its home country, b) copies of approvals from the home country governmental authorities, and c) copies of approvals from the accrediting

Dr. Orien L. Tulp  
October 18, 2018  
Page 3 of 4

agency, if any. This information should be e-mailed to Medical Education Resources at [medschoolreview@ecfmq.org](mailto:medschoolreview@ecfmq.org), along with any questions or comments." ECFMG has no record of receipt of any correspondence from you or any other USAT official that USAT was relocating to the United States due to Hurricane Irma, or any other hurricane.

***Certification of False Information Regarding Students Attendance Dates***

During the course of the investigation into USAT's branch campuses, ECFMG has discovered information that indicates that you provided false information to ECFMG regarding the attendance dates of some of your students on some of their applications for United States Medical Licensing Examinations (USMLE). Specifically, you certified that students were attending USAT during time periods which they were not actually attending USAT.

It is ECFMG's usual practice to consider any action or attempted actions by any person that would or could subvert the processes, programs or services of ECFMG to be *irregular behavior*. See Section A.1. of the enclosed *ECFMG Medical Education Credentials Committee Policies and Procedures*. Examples of irregular behavior include the provision of false information or falsified credentials to ECFMG. ECFMG investigates and considers allegations of irregular behavior in order to protect the integrity of its processes, programs, and services. The ECFMG Committee can impose serious sanctions if it finds irregular behavior has been committed.

The review into the matters described in this letter are ongoing. ECFMG reserves the right to amend or make additional allegations of irregular behavior, in accordance with its policies and procedures, should ECFMG obtain information that supports such amendment or additional allegations.

**ECFMG Medical Education Credentials Committee Review of this Allegation**

This matter will be referred to the ECFMG Committee for review at its next scheduled meeting on November 28, 2018 in Philadelphia. The ECFMG Committee will consider the information presented and take action in accordance with the enclosed *ECFMG Medical Education Credentials Committee Policies and Procedures*.

You will have the opportunity to appear personally before the ECFMG Committee, accompanied by legal counsel, if you so wish. Please indicate in your response if you wish to appear personally before the ECFMG Committee in your individual and/or official capacities. If you do wish to make a personal appearance, I will notify you of the particular time and location of the meeting.

The following documents will be included in the Agenda for the ECFMG Committee's review:

- ECFMG's August 21, 2018 letter to you and your August 21, 2018 e-mail reply;

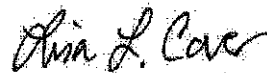
Dr. Orien L. Tulp  
October 18, 2018  
Page 4 of 4

- ECFMG's September 14, 2018 letter to you, including a copy of the affidavit sent to USAT students on September 14, 2018;
- Copy of "2018 University of Science, Arts and Technology Lecture Conference Schedule"
- September 15, 2017 ECFMG Announcement "Relocation of Caribbean Medical Schools Impacted by Hurricane Irma";
- Copy of "An Agreement Between the Government of Montserrat and Medical College of London (MCL) University of Science, Arts, and Technology (Montserrat) LTD. (USAT)"
- Affidavits completed by USAT students; and
- This letter.

Copies of these documents, with the exception of the completed affidavits by students, are enclosed.

**Please provide a response to ECFMG by November 1, 2018.** In your response, please note whether you wish to make a personal appearance before the ECFMG Committee. All documents should be submitted to Ms. Kara Corrado, Vice President for Operations, at the address above or via e-mail at [kcorrado@ecfm.org](mailto:kcorrado@ecfm.org). If you have any questions, please do not hesitate to call me at (215) 883-7318.

Sincerely,



Lisa L. Cover  
Senior Vice President for Business  
Development and Operations

Encl: As noted.



DR. ORIEN L. TULP,	)	
	)	
<i>Plaintiff,</i>	)	Case No. 2:18-cv-05540-WB
	)	
v.	)	Hon. Wendy Beetlestone
	)	
EDUCATIONAL COMMISSION FOR	)	
FOREIGN MEDICAL GRADUATES and	)	
DR. WILLIAM W. PINSKY,	)	
	)	
<i>Defendants.</i>	)	
	)	

Defendant Educational Commission for Foreign Medical Graduates (“ECFMG”),<sup>1</sup> by and through its undersigned counsel, hereby answers the Complaint filed by Dr. Orien L. Tulp in accordance with the numbered paragraphs thereof as follows:

1. The plaintiff is Dr. Orien L. Tulp, hereafter referred to as “Dr. Tulp”, an adult individual whose address for service of process is at 4288 Youngfield Street, Wheat Ridge, CO 80033. At all times material herein, plaintiff was President of the University of Science, Arts, and Technology (“USAT”), and had an ownership interest in the University. USAT is located in Montserrat, but its US administrative office is located at the address in the caption, and students take classes in Montserrat and the US via a distance education format.

**ANSWER:** ECFMG admits in part and denies in part the allegations of this paragraph. ECFMG admits that Dr. Orien L. Tulp is the plaintiff in this lawsuit. ECFMG denies that USAT students “take classes in Montserrat and the US via a distance education format.” ECFMG lacks

<sup>1</sup> On March 26, 2019, the Court dismissed all claims against Dr. William W. Pinsky. As a result, this filing is made by and on behalf of ECFMG only, the sole remaining defendant.



knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph and they are, therefore, denied.

2. A defendant is the Educational Commission for Foreign Medical Graduates, hereafter referred to as “ECFMG” or “the Board”, which is an unincorporated association, whose address for service of process is 3624 Market Street, Philadelphia, PA 19104. According to their mission statement, the ECFMG is an organization which purports to certify medical school students and graduates to practice medicine in the United States.

**ANSWER:** ECFMG admits in part and denies in part the allegations of this paragraph. ECFMG admits that is headquartered at 3624 Market Street, Philadelphia, PA 19104. ECFMG further admits that, among other things, it certifies that foreign medical graduates have met certain minimum criteria for entry into graduate medical education in the United States. ECFMG denies that it is an unincorporated association and that it “certif[ies] medical school students and graduates to practice medicine in the United States.” ECFMG denies the remaining allegations of this paragraph.

3. A defendant is Dr. William W. Pinsky, the President and CEO of the ECFMG, whose address for service of process is indicated in the caption. *See* Exhibit A, attached and incorporated herein.

**ANSWER:** ECFMG admits in part and denies in part the allegations of this paragraph. ECFMG admits that Dr. William W. Pinsky is the President and CEO of ECFMG and that ECFMG is headquartered at 3624 Market Street, Philadelphia, PA 19104. ECFMG denies that Dr. Pinsky is a defendant in this lawsuit because the Court has dismissed all claims against Dr. Pinsky. ECFMG denies the remaining allegations of this paragraph.

4. ECFMG is an organization sponsored by various medical organizations, including the Federation of State Medical Boards. Through the ECFMG’s certification process, it gives medical students and medical graduates a certification of eligibility (essentially a license) to apply for a ACGME [Accreditation Council for Graduate Medical Education] certified residency program of postgraduate specialty training that can lead to medical licensure of the applicant. A residency program is a certified program that trains students who have graduated from a medical school and taken a series of examinations or tests administered by way of the United States Medical Licensing Examination [the USMLE]. The state medical boards have given ECFMG the power to examine and certify international medical graduates [IMGs] as competent to undertake residency

training in the USA. Without the certification (license) from the ECFMG, a foreign medical graduate cannot start the process of being licensed as a physician in the United States.

**ANSWER:** ECFMG admits in part and denies in part the allegations of this paragraph. ECFMG admits that, among other things, it certifies that foreign medical graduates have met certain minimum criteria for entry into graduate medical education in the United States. ECFMG further admits that ACGME has elected to require foreign medical graduates who enter ACGME-accredited programs to be certified by ECFMG. ECFMG specifically denies that “[t]he state medical boards have given ECFMG the power to examine and certify international medical graduates [IMGs] as competent to undertake residency training in the USA.” ECFMG denies the remaining allegations of this paragraph.

5. The action of the ECFMG is in granting authority to apply for a residency program is state action. The ECFMG’s authority, which is in essence a license to apply for a residency program, has a close nexus to the various state medical boards. Without the ECFMG certificate, the ACGME postgraduate programs will not permit the applicant to start the training that will in essence allow the gate to be closed to obtaining a medical residency and eventual license to practice medicine in the USA. Without the residency training, the medical graduate cannot obtain a full unrestricted medical license. The state medical boards have granted the power to the ECFMG to screen foreign medical students for licensure. State action is established because of this delegation of screening power. *Jackson v. Metro Edison Co.*, 419 U.S. 345, 351.

**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied. To the extent that a response is required, ECFMG admits in part and denies in part the allegations of this paragraph. ECFMG admits that ACGME has elected to require foreign medical graduates who enter ACGME-accredited programs to be certified by ECFMG. ECFMG specifically denies that “[t]he state medical boards have granted the power to the ECFMG to screen foreign medical students for licensure.” ECFMG denies the remaining allegations of this paragraph.

6. The ECFMG has placed itself in a position of interdependence with the state medical boards. The ECFMG cannot be considered to be a private entity because the ECFMG reports to the state medical boards but also reports to the National Practitioner Data Bank. The

ECFMG would not exist without the powers delegated by the state medical boards. *Burton v. Wilmington Parkway Authority*, 365 U.S. 715, 725 (1961).

**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

7. Because the ECFMG's actions are delegated state actions, the ECFMG is required to give both procedural and substantive Fourteenth Amendment due process rights.

**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

#### **JURISDICTION AND VENUE**

8. The Court has jurisdiction under Diversity of Citizenship, the Civil Rights Act (42 U.S.C.A. 1983) and the Due Process clause of the United States Constitution, with pendent jurisdiction to consider any claims arising under state law.

**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied.

9. Venue is properly before the Court, since all defendants are located and conduct business in the Eastern District of Pennsylvania.

**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied. To the extent that a response is required, ECFMG admits that it is headquartered and conducts business in the Eastern District of Pennsylvania.

#### **SUMMARY**

10. In an attempt to close down the USAT and sanction Dr. Tulp, defendant ECFMG has refused to allow students of USAT to take necessary medical examinations. Defendant ECFMG has effectively closed USAT, by refusing to release scores for students who paid for the examinations. Doctors who graduated from USAT have been unable to commence their residency due to the refusal of the Board to issue an appropriate certification. ECFMG has also sent misleading "affidavits" to many USAT students and threatened many students with "irregular

behavior” in order to sanction Dr. Tulp and force closure of the University, which he founded. He is President, CEO, and an equal owner of the University. Thus, ECFMG tortiously interfered with the educational contract between the students of USAT, the University, and Dr. Tulp, denied due process to Dr. Tulp and the students of USAT, and improperly used an “affidavit” [See Exhibit DI to coerce information from students. [Pinsky letter, See Exhibit A.] In addition, the Board placed information in the World Directory of Medical Schools, prior to any hearing or legal process, advising that it would no longer recognize the test scores of USAT graduates after January 1, 2019. See Exhibit B.

**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied. Moreover, the allegations of this paragraph refer to written documents that speak for themselves, and Plaintiff’s characterization of them is, therefore, denied. To the extent that a response is required, ECFMG admits in part and denies in part the allegations of this paragraph. [ECFMG admits that it imposed a limited sanction on Plaintiff after finding that he engaged in “irregular behavior” (as defined by and consistent with ECFMG’s Policies and Procedures Regarding Irregular Behavior), which finding was made after Plaintiff was given notice of the allegations of “irregular behavior,” copies of ECFMG’s Policies and Procedures Regarding Irregular Behavior and documentary evidence considered making the finding of “irregular behavior,” and an opportunity to be heard at an in-person hearing before ECFMG’s Medical Education Credentials Committee. ECFMG further admits that it sent blank affidavit forms to USAT students applying to ECFMG for services to gather information about their medical school coursework. ECFMG denies that it “has refused to allow students of USAT to take necessary medical examinations.” ECFMG denies that it “has effectively closed USAT, by refusing to release scores for students who paid for the examinations.” ECFMG denies that “[d]octors who graduated from USAT have been unable to commence their residency due to the refusal of the Board to issue an appropriate certification.” ECFMG denies that the blank affidavits sent to USAT students were “misleading,” “threatened” students with “irregular behavior,” were sent “to sanction Dr. Tulp and force closure of” USAT. ECFMG lacks knowledge or information

sufficient to form a belief about the truth of the allegation that Plaintiff “is President, CEO, and an equal owner of” USAT. ECFMG specifically denies that Plaintiff was denied due process. ECFMG denies the remaining allegations of this paragraph.

### GENERAL ALLEGATIONS

11. ECFMG sent to USAT a letter implying that the school would be closed on or about 01/01/19 because the Board would no longer recognize the scores of its students in taking the three-part United States Medical Licensing Examination. This action prohibits applicants from sitting for the USMLE, which is required for unrestricted medical licensure.

**ANSWER:** The allegations of this paragraph refer to a letter that is a written document that speaks for itself, and Plaintiff’s characterization of it is, therefore, denied. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

12. On 11/21/18, Kara Corrado, J.D., Vice President for Operations of the Board, sent a letter to counsel for USAT indicating two concerns: 1) that USAT’s authority to conduct its medical education program amounted to “irregular behavior” because USAT had not been certified by a governmental entity in the United States, and 2) the allegation that USAT was operating medical school campuses in the United States. *See Exhibit E.* On October 18, 2018, Lisa Cover, a Senior Vice President with ECFMG, wrote a letter to Dr. Tulp advising him of the allegation that he engaged in “irregular behavior”. *See Exhibit F.*

**ANSWER:** The allegations of this paragraph refer to letters that are written documents that speaks for themselves, and Plaintiff’s characterization of them is, therefore, denied. To the extent that a response is required, ECFMG admits in part and denies in part the allegations of this paragraph. ECFMG admits that Kara Corrado, the ECFMG Vice President of Operations, sent a letter to counsel for Plaintiff on November 21, 2018 that, *inter alia*, (i) confirmed Plaintiff would make personal appearance with his attorneys at a hearing before the ECFMG Medical Education Credentials Committee on November 28, 2018 in connection with allegations of “irregular behavior” against Plaintiff, (ii) corrected numerous misstatements set forth in a letter from counsel for Plaintiff dated November 13, 2018, and (iii) as ECFMG had already done multiple times, invited Plaintiff and USAT to provide evidence to ECFMG that USAT’s operations in the United

States were authorized. ECFMG further admits that Lisa Cover, the ECFMG Senior Vice President for Business Development and Operations, sent a letter to Plaintiff on October 18, 2018, which (i) gave Plaintiff notice of the allegations of “irregular behavior” against Plaintiff, (ii) enclosed numerous documents supporting the allegations of “irregular behavior” against Plaintiff, and (iii) invited Plaintiff to make a personal appearance before the ECFMG Medical Education Credentials Committee at a hearing regarding the allegations of “irregular behavior” against Plaintiff, pursuant to the Committee’s policies and procedures. ECFMG denies the remaining allegations of this paragraph.

13. USAT has a certification from the government of Montserrat, allowing it to operate temporary venues due to an active volcano on the island. Such certification had been recognized by the Board without incident since 2003. USAT also operates online courses for the majority of its basic sciences course requirements via a specially developed SPOC [small platform online courses, developed by USAT]. A true and correct copy of the certification from Montserrat is attached and incorporated as Exhibit C.

**ANSWER:** The allegations of this paragraph refer to a written document that speaks for itself, and Plaintiff’s characterization of it is, therefore, denied. To the extent that a response is required, ECFMG admits in part and denies in part the allegations of this paragraph. ECFMG admits that before ECFMG learned of USAT’s unauthorized operations in the United States, ECFMG treated USAT as a foreign medical school located in Montserrat based on authorization by Montserrat to operate there. ECFMG lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph and they are, therefore, denied.

14. Students from USAT have each paid well over \$1,000 to the Board to take necessary medical exams, and the Board has refused to release their scores because of alleged misconduct by Dr. Tulp, and an assignment by the Board of “irregular behavior” arising out of an illegal affidavit issued to students of USAT. “Irregular behavior” may be a permanent admonition on a student or physician’s official record, and make residency difficult, if not impossible.



**ANSWER:** ECFMG admits in part and denies in part the allegations of this paragraph.

ECFMG admits that a finding of “irregular behavior” results in a permanent annotation of that finding in ECFMG’s records. ECFMG denies the remaining allegations of this paragraph.

15. The Board set up a hearing on 11/28/18 for Dr. Tulp, only, in Philadelphia, at the address in the caption to address so-called “irregular behavior”. After a few minutes, with no witnesses called, Board counsel announced that the hearing was terminated. Prior to the hearing, the Board took the position that Dr. Tulp had the burden of proof on the issue of “irregular behavior” for which he had been charged by the Board. The Board set 20 minutes as the duration of the hearing. No testimony was taken or exhibits received in evidence, before Board counsel terminated the hearing. No Transcript of the proceedings has been received. The Board indicated that on 01/01/19 it will issue a finding of “irregular behavior” to Dr. Tulp effectively closing USAT.

**ANSWER:** ECFMG admits in part and denies in part the allegations of this paragraph.

ECFMG admits that a hearing about the allegations of “irregular behavior” against Plaintiff was held on November 28, 2018 before ECFMG’s Medical Education Credentials Committee pursuant to the Committee’s policies and procedures. ECFMG admits that it allotted 20 minutes for the hearing (consistent with ECFMG’s ordinary practice) and that the hearing concluded sooner because Plaintiff (through his counsel) refused to engage and became argumentative. ECFMG denies the remaining allegations of this paragraph.

16. There was no jurisdiction over, or relationship with, Dr. Tulp to compel him to attend the hearing by the Board, and he made a special appearance while not agreeing to jurisdiction. ECFMG has no jurisdiction over Dr. Tulp, or legal relationship with Dr. Tulp, or the power to enter any sanction against him. The Board has no contractual or statutory authority over Dr. Tulp.

**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

17. The Board would not give Dr. Tulp sufficient discovery to conduct an adequate defense. Also, the Board has never requested any curricula, student records, or any documentation from USAT.

**ANSWER:** ECFMG denies the allegations of this paragraph.

18. The term “irregular behavior” is void for vagueness, since “irregular behavior” is so broad that it essentially amounts to any behavior which the Board does not approve. There is no intelligible standard to ascertain “irregular behavior” with the exception of the fiat by the ECFMG. There is no due process mechanism to effectively challenge a finding of “irregular behavior” which can amount to an indefinite suspension of United States medical licenses by the Board without formal notification of such assignment to the individual concerned.

**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

19. There is no reasonable way to ascertain the standards for “irregular behavior” in the instant case, prior to any adjudication.

**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

20. The Board has effectively closed USAT by not allowing its students and graduates to complete the necessary medical examinations beyond January 1, 2019, and has tortiously interfered with the relationship of the students of USAT and Dr. Tulp, the President of the University.

**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

**FIRST CAUSE OF ACTION**  
**Plaintiff v. ECFMG**

21. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

**ANSWER:** ECFMG incorporates its responses to the previous paragraphs as though fully set forth herein.

22. This cause of action is for the illegal actions of the ECFMG (the Board) in tortiously interfering with the contract between the students of USAT and plaintiff Dr. Orien Tulp, the University President and co-owner.

**ANSWER:** The Court dismissed Plaintiff's First Cause of Action, and thus no response to this paragraph is required.

23. The Board allegedly refused to release scores of necessary medical exams to students and graduates of USAT, de facto, closing the University.

**ANSWER:** The Court dismissed Plaintiff's First Cause of Action, and thus no response to this paragraph is required.

24. The Board published, in the World Directory of Medical Schools, a warning to students that it would not recognize USAT with respect to necessary medical qualifying examinations after January 1, 2019. *See* Exhibit B.

**ANSWER:** The Court dismissed Plaintiff's First Cause of Action, and thus no response to this paragraph is required.

25. The Board sent illegal "affidavits" to students in an attempt to intimidate them from continuing as students at USAT. These alleged affidavits threatened medical students with perjury, as well as "irregular behavior", and also directed the students to provide certain documentary evidence, such as a copy of their passport. This "affidavit" by the Board was an abuse of process, and constituted fraudulent or negligent representation, since it was tantamount to a "subpoena duces tecum" without first having a legal proceeding. The Board had no power to issue these so-called affidavits. These affidavits are also a violation of Federal Education Records Protection Act (FERPA). Students are predominantly US citizens and are entitled to such protection under FERPA.

**ANSWER:** The Court dismissed Plaintiff's First Cause of Action, and thus no response to this paragraph is required.

26. The purpose of the ECFMG doing this was to effectively remove Dr. Tulp as President of the University by discouraging students from registering or continuing their education at USAT, including verbal recommendations from ECFMG case workers. The Board issued "affidavits" and threatened to find students of USAT guilty of "irregular behavior".

**ANSWER:** The Court dismissed Plaintiff's First Cause of Action, and thus no response to this paragraph is required.

27. There was no hearing before the students of USAT were sent emails by the ECFMG telling them that they may have been assigned "irregular behavior" and that their scores would not be released to medical institutions to be accepted for residency applications or other ECFMG services.

**ANSWER:** The Court dismissed Plaintiff's First Cause of Action, and thus no response to this paragraph is required.

28. ECFMG alleges to be a private organization which permits the administration of qualifying examinations for foreign medical students and international medical graduates and passes information to the state licensing agencies in the United States. De facto, the ECFMG is a quasi-governmental agency that issues certificates, that are essentially licenses, to foreign medical students and physicians upon completion of their certification process, and it holds itself out to medical students and others as a governmental entity.

**ANSWER:** The Court dismissed Plaintiff's First Cause of Action, and thus no response to this paragraph is required.

29. As a result of the illegal actions of the Board in refusing to release the scores of the students of the plaintiff, the plaintiff has suffered, and will continue to suffer, irreparable harm including, but not limited to, the immediate closing of USAT College of Medicine and the removal of Dr. Tulp as a medical educator under the cloud of an indefinite sentence of "irregular behavior" for a duration of not less than 5 years.

**ANSWER:** The Court dismissed Plaintiff's First Cause of Action, and thus no response to this paragraph is required.

30. Dr. Tulp will also suffer loss of his position as President of the University, as well as direct monetary damages resulting from the closing of USAT, arising out of the actions of ECFMG to close USAT, and to preclude its students from practicing medicine or engaging in postgraduate training in the USA, and the discouraging of any students from attending an institution where they cannot receive required certification from the ECFMG Board to qualify for licensure or registration to practice medicine in the USA.

**ANSWER:** The Court dismissed Plaintiff's First Cause of Action, and thus no response to this paragraph is required.

WHEREFORE, the Court is requested to order ECFMG to immediately resume processing the medical examinations of students of USAT, and release their examination scores, and remove the negative advisory from the sponsor notes on the World Directory of Medical Schools listing for the USAT College of Medicine, and to award such other injunctive and equitable relief as appropriate, plus damages, interest, and attorneys fees.

**ANSWER:** The Court dismissed Plaintiff's First Cause of Action, and thus no response to this WHEREFORE clause is required.

**SECOND CAUSE OF ACTION**  
**Plaintiff v. ECFMG**

31. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

**ANSWER:** ECFMG incorporates its responses to the previous paragraphs as though fully set forth herein.

32. This cause of action is for violation of due process by the ECFMG (the Board).

**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied.

33. The Board violated the due process rights of Dr. Tulp by finding him guilty of “irregular behavior” when it had no jurisdiction over Dr. Tulp, or any direct contact with him prior to a finding of “irregular behavior”.

**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

34. The Board violated the due process rights of Dr. Tulp by illegally withholding necessary medical examination for USAT students and graduates in an attempt to sanction plaintiff and to force closure of USAT.

**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

35. The Board violated the due process rights of Dr. Tulp by sending misleading affidavits to students of USAT, which affidavits were illegal and designed to intimidate the students from attending USAT. The Board stated that as January 1, 2019, students of USAT may not apply to ECFMG for certification. Essentially, the Board engaged in an illegal scheme to destroy USAT and Dr. Tulp by publishing the demise of the University in the World Directory of Medical Schools before any notification of such intent by the ECFMG.

**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

36. The Board violated the due process rights of Dr. Tulp by failing to award him or the students of his college a legitimate hearing before taking adverse action. The Board commingled the adjudicatory and investigative functions, particularly through the use of affidavits sent to students to secure documentary evidence under the threat of "irregular behavior". See *Lyness v. Corn., State Bd. of Medicine* 529 Pa. 535 (1992). ]

**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

37. ECFMG is estopped from denying that it is a governmental or quasi-governmental entity, *inter alia*, because no disclaimer that it was a private entity to that effect was placed on the affidavits sent to thousands of USAT students. In point of fact, the opposite was implied.

**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

38. The Board has acted as a governmental entity, and is estopped from denying the same.

**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

39. When the Board corresponded with USAT and with its students, there was no disclaimer that the Board was not acting on behalf of any governmental authorization, or that it was allegedly a private entity, and the students were not required by law to respond to the affidavit or provide any documents. Students were required to complete "affidavits" under penalty of a finding of "irregular behavior" and denial of ECFMG services.

**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

40. Under the doctrine of state action, the Board has failed to exercise due process in its dealings with USAT and its students as is required by the Due Process Clause of the Pennsylvania and US Constitutions.



**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

41. The Board has failed to show due process to USAT students, as heretofore mentioned. The affidavits indicated that the Board has illegally commingled the adjudicatory and prosecutorial functions, in violation of due process.

**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

42. As a result of the Board acting as a quasi-governmental entity, Dr. Tulp and his University suffered the damages as previously enumerated.

**ANSWER:** The allegations of this paragraph contain conclusions of law to which no response is required and they are, therefore, denied. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

WHEREFORE, the Court is requested to order ECFMG to immediately resume processing the medical examinations of students of USAT, and release their examination scores, and remove the negative advisory from the sponsor notes on the World Directory of Medical Schools listing for the USAT College of Medicine, and to award such other injunctive and equitable relief as appropriate, plus damages, interest, and attorneys fees.

**ANSWER:** In response to this WHEREFORE clause, ECFMG denies that Plaintiff is entitled to any type of remedy, relief, or damages whatsoever, including the relief requested in this WHEREFORE clause. ECFMG denies the remaining allegations of this paragraph.

**THIRD CAUSE OF ACTION  
Plaintiff v. ECFMG**

43. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

**ANSWER:** ECFMG incorporates its responses to the previous paragraphs as though fully set forth herein.

44. This is a cause of action for fraudulent misrepresentation, abuse of process, and negligent representation against the ECFMG (the Board).

**ANSWER:** The Court dismissed Plaintiff's Third Cause of Action, and thus no response to this paragraph is required.

45. As heretofore indicated, the Board committed the aforementioned torts through the following acts and omissions:

- (a) representing itself as an official governmental agency;
- (b) distributing affidavits to intimidate USAT students, which affidavits did not have a disclaimer or conform to law;
- (c) placing misleading information about USAT into the World Directory of Medical Schools without notice, and which was designed to intimidate students and to effectively force closure of USAT;
- (d) using illegal affidavits whose purpose was to gather documents and evidence of alleged culpable behavior by USAT and Dr. Tulp, all of which was in violation of FERPA, the Family Educational Rights and Privacy Act;
- (e) violating FERPA by not receiving the requisite consent of students to their educational records.

**ANSWER:** The Court dismissed Plaintiff's Third Cause of Action, and thus no response to this paragraph and its subparts is required.

46. As indicated in the prior counts, the Board has held itself out as a governmental agency. The Board has never indicated to those that it dealt with, in particular the students, that it is not an official governmental agency.

**ANSWER:** The Court dismissed Plaintiff's Third Cause of Action, and thus no response to this paragraph is required.

47. Accordingly, the Board is estopped by its conduct to deny that it is required to show due process, as if it were a governmental entity.

**ANSWER:** The Court dismissed Plaintiff's Third Cause of Action, and thus no response to this paragraph is required.

WHEREFORE, the Court is requested to order ECFMG to immediately resume processing the medical examinations of students of USAT, and release their examination scores, and remove the negative advisory from the sponsor notes on the World Directory of Medical Schools listing

for the USAT College of Medicine, and to award such other injunctive and equitable relief as appropriate, plus damages, interest, and attorneys fees.

**ANSWER:** The Court dismissed Plaintiff's Third Cause of Action, and thus no response to this WHEREFORE clause is required.

**FOURTH CAUSE OF ACTION**  
**Plaintiff v. All Defendants**

48. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

**ANSWER:** ECFMG incorporates its responses to the previous paragraphs as though fully set forth herein.

49. This cause of action arises out of the 12/14/18 letter by Dr. William W. Pinsky, which is attached and incorporated as Exhibit A.

**ANSWER:** The Court dismissed Plaintiff's Fourth Cause of Action, and thus no response to this paragraph is required. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

50. Dr. Pinsky is the President and CEO of the ECFMG, and in that capacity, he authorized the illegal actions of the ECFMG, heretofore described.

**ANSWER:** The Court dismissed Plaintiff's Fourth Cause of Action, and thus no response to this paragraph is required. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

51. On 12/14/18, Dr. Pinsky sent a letter [Exhibit A] to Dr. Orien L. Tulp, addressing him as Professor and President of USAT at its main location in Montserrat.

**ANSWER:** The Court dismissed Plaintiff's Fourth Cause of Action, and thus no response to this paragraph is required. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

52. In this letter, Dr. Pinsky indicated, *inter alia*, essentially, that the ECFMG Committee had determined that, for a minimum period of five years, from the date of the letter, that Dr. Tulp was banned from submitting any documents or having any dealings with the ECFMG on behalf of USAT or otherwise.

**ANSWER:** The Court dismissed Plaintiff's Fourth Cause of Action, and thus no response to this paragraph is required.

53. This indefinite ban of Dr. Tulp for allegedly engaging in "irregular behavior" was arbitrarily imposed by the ECFMG Committee for alleged unproven false statements, none of which allegations were actually documented.

**ANSWER:** The Court dismissed Plaintiff's Fourth Cause of Action, and thus no response to this paragraph is required. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

54. This ban effectively precludes Dr. Tulp from operating, or being involved with, any medical school, in any capacity, for an indefinite period of time, subject to the unfettered discretion of ECFMG.

**ANSWER:** The Court dismissed Plaintiff's Fourth Cause of Action, and thus no response to this paragraph is required. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

55. This ban effectively closes USAT, as an institution for medical students, for an indefinite period of time, if not permanently.

**ANSWER:** The Court dismissed Plaintiff's Fourth Cause of Action, and thus no response to this paragraph is required. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

56. Actions which allegedly are announced in Dr. Pinsky's letter have already been instituted by the ECFMG such as the ban on the World Directory of Medical Schools website and the shutdown of the portal and the blocking of student scores and the affidavits.

**ANSWER:** The Court dismissed Plaintiff's Fourth Cause of Action, and thus no response to this paragraph is required. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

57. The ban by the ECFMG, as set forth in the letter of Dr. Pinsky, also means that the operations of the USAT in the United States must be shut down, and the students from the United States will be separated from USAT, which will have to be closed if the actions of the ECFMG are not reversed. Two of the three administrative conference venues have been closed due to the

actions of the ECFMG. Students have been forced to transfer to other medical schools to continue their education past January 1, 2019. As previously mentioned, the bulk of the USAT Basic Sciences Program is delivered via an advanced SPOC [Small Program Online Course program developed by USAT and delivered worldwide, thereby negating any requirement for a fixed US Campus]. The ECFMG or Dr. Pinsky has never asked for any information about the structure or content of the Basic Sciences Program.

**ANSWER:** The Court dismissed Plaintiff's Fourth Cause of Action, and thus no response to this paragraph is required. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

58. The actions of the ECFMG on Dr. Tulp and the students of USAT amount to a violation of procedural and substantive due process, as follows:

- (a) banning Dr. Tulp without a proper hearing;
- (b) banning Dr. Tulp without an evidentiary basis;
- (c) forcing closure of USAT and causing its students to be dismissed in an arbitrary and capricious manner;
- (d) requiring, at a hearing on 11/28/18, that USAT assume the burden of proof and allotting 20 minutes for the hearing;
- (e) terminating the hearing on 11/28/18 without receiving any evidence from Dr. Tulp;
- (f) finding Dr. Tulp guilty of "irregular behavior" without jurisdiction and due process, and effectively forcing closure of USAT College of Medicine without legal process, and constructively dismissing the students of USAT in violation of the law.

**ANSWER:** The Court dismissed Plaintiff's Fourth Cause of Action, and thus no response to this paragraph and its subparts is required. To the extent that a response is required, ECFMG denies the allegations of this paragraph and its subparts.

WHEREFORE, the Court is requested to order ECFMG to immediately resume processing the medical examinations of students of USAT, and release their examination scores, and remove the negative advisory from the sponsor notes on the World Directory of Medical Schools listing for the USAT College of Medicine, and to award such other injunctive and equitable relief as appropriate, plus damages, interest, and attorneys fees.

**ANSWER:** The Court dismissed Plaintiff's Fourth Cause of Action, and thus no response to this WHEREFORE clause is required. To the extent that a response is required, ECFMG denies the allegations of this paragraph.

**AFFIRMATIVE DEFENSES**

Without assuming the burden of proof on any matters that would otherwise rest with Plaintiff, and expressly denying any and all wrongdoing, ECFMG alleges the following affirmative defenses. ECFMG presently has insufficient knowledge or information to form a belief as to whether there are additional defenses than those stated below. Therefore, ECFMG expressly reserves the right to assert additional defenses.

1. The Complaint fails to state a due process claim upon which relief may be granted.
2. Plaintiff's due process claim fails because ECFMG afforded Plaintiff due process.
3. ☒ Plaintiff's due process claim fails because Plaintiff had notice and an opportunity to be heard.
4. ☒ Plaintiff's due process claim is barred because Plaintiff has not suffered any actual injury or damage.
5. Plaintiff is not entitled to relief under the doctrine of unclean hands.
6. Plaintiff failed to mitigate his purported damages.



Respectfully submitted,

DATED: April 9, 2019

/s/ Elisa P. McEnroe

Elisa P. McEnroe, PA Bar No. 206143

Matthew D. Klayman, PA Bar No. 319105

MORGAN, LEWIS & BOCKIUS, LLP

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Philadelphia, PA 19103-2921

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elisa.mcenroe@morganlewis.com

matthew.klayman@morganlewis.com

*Attorneys for the Educational Commission for  
Foreign Medical Graduates*

**CERTIFICATE OF SERVICE**

I do hereby certify that on this date, I caused true and correct copies of the foregoing document to be served via electronic filing upon the following counsel of record via the ECF system and/or e-mail:

TOMMY SWATE  
403 WILD PLUM  
HOUSTON, TX 77013

WILLIAM C. REIL  
1515 MARKET ST SUITE 1200  
PHILADELPHIA, PA 19102  
215-564-1635  
Fax: 215-564-4292  
Email: billreillaw@gmail.com

*Attorneys for Plaintiffs*

DATED: April 9, 2019

/s/ Elisa P. McEnroe  
Elisa P. McEnroe



Bill Reil &lt;billreillaw@gmail.com&gt;

**RE: Tulp v. ECFMG - Filing**

1 message

**Klayman, Matthew D.** <matthew.klayman@morganlewis.com>

Mon, May 6, 2019 at 10:56 AM

To: "swatemd@aol.com" &lt;swatemd@aol.com&gt;

Cc: "McEnroe, Elisa P." &lt;elisa.mcenroe@morganlewis.com&gt;, Bill Reil &lt;billreillaw@gmail.com&gt;

Mr. Swate,

We complied with Judge Beetlestone's Policies and Procedures (available online at <http://www.paed.uscourts.gov/documents/procedures/beepol.pdf>) and will not withdraw our filing.

Per Section V.A-B of the Civil Cases section in Judge Beetlestone's Policies and Procedures, we sent you and Mr. Reil our proposed "single, joint appendix of all exhibits that may be referenced" in the summary judgment briefing. We then spoke to Mr. Reil about how this is for the Court's convenience, per her procedures, so that we can all reference the same universe of documents. We have not represented that you stipulated to anything in that regard. Section V.B explains how you may submit additional exhibits, if you believe it is necessary to do so.

Per Section V.C.1 of the Civil Cases section in Judge Beetlestone's Policies & Procedures, we submitted "a separate **Statement of Undisputed Material Facts** containing a numbered, paragraph-by-paragraph recitation of facts with specific citations to the joint appendix in support of all of those facts **as to which the moving party [(in this case, ECFMG)] contends no genuine issue exists.**" (Emphases added). Section V.C.2 explains how Dr. Tulp may submit "a separate Statement of Disputed Material Facts, stating in similar paragraph form whether [Dr. Tulp] accepts or rejects that each fact as stated by the moving party is undisputed." The Court did not instruct us to share with you a copy of our statement of facts in advance of filing and we followed the proper procedures.

A courtesy copy of Defendant's filing was sent to the Court today, along with the enclosed correspondence.

Regards,

Matt

**Matthew D. Klayman****Morgan, Lewis & Bockius LLP**

1701 Market Street | Philadelphia, PA 19103-2921

Direct: +1.215.963.5609 | Main: +1.215.963.5000 | Fax: +1.215.963.5001

matthew.klayman@morganlewis.com | [www.morganlewis.com](http://www.morganlewis.com)Assistant: Angela P. Garden | +1.215.963.5463 | [angela.garden@morganlewis.com](mailto:angela.garden@morganlewis.com)

**From:** swatemd@aol.com <swatemd@aol.com>  
**Sent:** Friday, May 03, 2019 10:49 PM  
**To:** Klayman, Matthew D. <matthew.klayman@morganlewis.com>  
**Subject:** Re: Tulp v. ECFMG - Filing

[EXTERNAL EMAIL]

The motion you filed indicated that certain facts were agreed to by Dr. Tulp or his attorneys is false. Please withdraw this documents. The various documents e mailed to me on May 3, are the first time either Mr Riel or I have seen the "so called agreed facts". We certainly have agreed to no facts at this time. We will review your claims of facts. A decision will be made as to which facts we can agree and which facts we disagree. I point out to you the court instructed you to submit your version of the facts to Mr. Riel and I. Tommy Swate

-----Original Message-----

**From:** Klayman, Matthew D. <matthew.klayman@morganlewis.com>  
**To:** swatemd <swatemd@aol.com>; Bill Reil <billreillaw@gmail.com>  
**Cc:** McEnroe, Elisa P. <elisa.mcenroe@morganlewis.com>  
**Sent:** Fri, May 3, 2019 5:21 pm  
**Subject:** Tulp v. ECFMG - Filing

Counsel,

Please see attached.

Regards,

Matt

**Matthew D. Klayman**

**Morgan, Lewis & Bockius LLP**

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**William C. Reil, Esquire**  
**1515 Market Street, Suite 1200, Philadelphia, PA 19102**  
**Tel: 215-564-1635 Fax: 215-564-4292**  
**BillReilLaw@gmail.com**

May 2, 2019

**BY EMAIL ONLY**

elisa.mcenroe@morganlewis.com

Elisa P. McEnroe, Esquire  
Morgan, Lewis, and Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

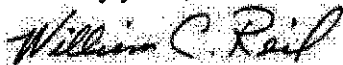
Re: Dr. Tulp v. ECFMG and Dr. Pinsky  
Docket No: 2:18-cv-05540-WB  
**Joint Appendix and Stipulations**

Dear Ms. McEnroe:

I received your email captioned "Joint Appendix." There has been insufficient time to look over 500 pages of documents which you sent to us. It would be useful if you could send a list of proposed stipulations, which you wish Mr. Swate and myself to consider.

Generally, I will stipulate to the authenticity of any reasonable exhibit, but not necessarily to the truth of the entire document. Accordingly, it would be preferable to see the document to which the appendix refers. I would recommend to my client that we reserve the right to object to a stipulation, contingent upon how it is used.

Sincerely yours,



William C. Reil

cc: Tommy Swate, Esquire  
Dr. Orien L. Tulp

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DR. ORIEN L. TULP,  
Plaintiff,

CIVIL ACTION

v.

EDUCATIONAL COMMISSION FOR  
FOREIGN MEDICAL GRADUATES AND  
DR. WILLIAM W. PINSKY,  
Defendants.

NO. 18-5540

**FILED**

**JAN 25 2019**

KATE BARKMAN, Clerk  
By \_\_\_\_\_ Dep. Clerk

**SCHEDULING ORDER**

AND NOW, this 24th day of January, 2019, following a Preliminary Pretrial Conference,

**IT IS ORDERED** as follows:

1. All fact discovery shall be completed by April 19, 2019.
2. Any motions for summary judgment motions shall be filed and served on or before May 3, 2019. If the parties do not plan on filing summary judgment motions, they shall so report to the Court (Chambers, Room 3809) on or before May 3, 2019. In all summary judgment filings, the parties shall comply with the provisions of this Court's Policies and Procedures regarding the submission of a joint appendix and of statements of undisputed and disputed material facts.

- A. When one party intends to move for summary judgment, that party shall initiate a process whereby the parties shall meet, confer and develop a single, joint appendix of all exhibits, including any and all exhibits that may be referenced in their respective briefs.
- B. The joint appendix shall be filed by the movant no later than the date the initial motion for summary judgment is docketed. All pages of the joint appendix shall be consecutively "Bates stamped" and referenced in the motions and briefs by the Bates number assigned each page. The joint appendix shall include a table of contents. The parties shall make every effort to include all necessary exhibits in the initial joint appendix. Should it become necessary for the non-moving party to submit additional exhibits, however, it may do so at the time it files its opposition brief. Any addendum to the joint appendix shall



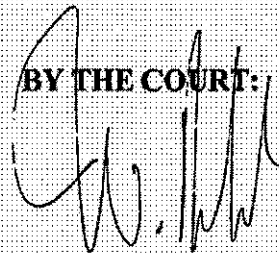
be consecutively Bates stamped, beginning at the page number where the joint appendix left off, and shall include a table of contents. Judge Beetlestone will not consider material not included in the appendix.

C. Statements of Facts

1. Upon motion for summary judgment, counsel shall also submit a separate Statement of Undisputed Material Facts containing a numbered, paragraph-by-paragraph recitation of facts with specific citations to the joint appendix in support of all of those facts as to which the moving party contends no genuine issue exists.
2. Counsel opposing a motion for summary judgment shall also submit a separate Statement of Disputed Material Facts, stating in similar paragraph form whether that party accepts or rejects that each fact as stated by the moving party is undisputed. If a party contends that a fact is in dispute, citation must be made to the joint appendix that supports the party's view that that particular fact is in dispute. The party should then list its own additional disputed facts in the same format with specific citations to the joint appendix.
3. Counsel for the moving party shall then submit—even if not filing a reply brief—a separate Reply Statement of Undisputed Material Facts stating in similar paragraph form whether that party accepts or rejects that each additional fact as stated by the opposing party is disputed. If a party contends that a fact is undisputed, citation must be made to the joint appendix that supports that party's view that the particular fact is undisputed.

3. For all filings submitted and conferences held pursuant to this scheduling order, and for all pretrial and trial proceedings referred to herein, counsel shall follow Judge Beetlestone's Policies and Procedures, a copy of which can be found online at [www.paed.uscourts.gov](http://www.paed.uscourts.gov).

BY THE COURT:



WENDY BEETLESTONE, J.

ENT'D JAN 25 2019

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DR. ORIEN L. TULP,	)	
	)	
<i>Plaintiff,</i>	)	Case No. 2:18-cv-05540-WB
	)	
v.	)	Hon. Wendy Beetlestone
	)	
EDUCATIONAL COMMISSION FOR	)	
FOREIGN MEDICAL GRADUATES and	)	
DR. WILLIAM W. PINSKY,	)	
	)	
<i>Defendants.</i>	)	
	)	

**DEFENDANT EDUCATIONAL COMMISSION FOR FOREIGN  
MEDICAL GRADUATES' OBJECTIONS AND RESPONSES TO  
PLAINTIFF'S DISCOVERY REQUESTS**

Pursuant to Federal Rules of Civil Procedure 26, 33, and 34, Defendant Educational Commission for Foreign Medical Graduates (“ECFMG”),<sup>1</sup> by and through its counsel, serves the following responses and objections to Plaintiff Dr. Orien L. Tulp’s Interrogatories, Requests for Production of Documents, and Requests for Admissions (“Interrogatories and Requests”).

## **GENERAL RESPONSES AND OBJECTIONS**

1. All of these General Responses and Objections are incorporated into each of the Specific Responses and Objections set forth below. These General Responses and Objections, which form a part of ECFMG's Specific Responses and Objections to each individual Interrogatory and Request, are set forth here to avoid the duplication of restating them in response to each individual Interrogatory. The General Responses and Objections may also be specifically

<sup>1</sup> On March 26, 2019, the Court dismissed all claims against Dr. William W. Pinsky. As a result, these Responses and Objections are made by and on behalf of ECFMG only, the sole remaining defendant.

referred to in ECFMG's Specific Responses and Objections to certain of the individual Interrogatories and Requests for purposes of emphasis and clarity. Omission from any Specific Response or Objection, however, should not be construed as a waiver of any General Response or Objection.

2. ECFMG objects to the Interrogatories and Requests to the extent they seek to impose obligations that are inconsistent with or greater than those imposed by the Federal Rules of Civil Procedure, the Local Rules of the Eastern District of Pennsylvania, and/or the Court's rules and procedures.

3. Unless ECFMG expressly states otherwise, neither the Requests and Interrogatories nor ECFMG's Responses and Objections to them shall be construed as admissions by ECFMG that any fact or circumstance alleged in any Request or Interrogatory occurred or existed or that Plaintiff's characterization of any facts or circumstances is correct.

4. ECFMG objects to the Requests and Interrogatories to the extent that they seek information that is immune from disclosure, including information protected by the attorney-client privilege, the attorney work product doctrine, or any other legally cognizable privilege, protection, or immunity. Accordingly, ECFMG will not produce such information. The provision of any information that is privileged, protected, or immune from disclosure would be inadvertent and is not a waiver of any privilege, protection, or immunity.

5. ECFMG objects to the Interrogatories and Requests as overbroad and unduly burdensome in the instances that Plaintiff has not identified an applicable time period. Where Plaintiff has not identified a time period applicable to a particular Interrogatory and Request, ECFMG will interpret the Interrogatory and Request as requesting information from August 1,

2018 to December 24, 2018, the date when the Complaint in the Action was filed, unless otherwise stated in a Response or Objection to a particular Request or Interrogatory.

6. ECFMG objects to the Interrogatories and Requests to the extent that they seek documents and information that are not relevant to the claims or defenses of a party, and/or not proportional to the needs of this case.

7. ECFMG objects to the Interrogatories and Requests to the extent they seek documents and information not within its possession, custody, or control, or seek documents and information that are already in the possession of Plaintiff or that are equally available to Plaintiff from other sources.

8. These Responses and Objections reflect ECFMG's present knowledge, information, and belief. These Responses and Objections are therefore without prejudice to ECFMG's right to supplement, revise, modify, correct, add to, or clarify the Responses and Objections set forth herein and the information provided, should it discover additional documents, information, or grounds for objection. ECFMG reserves the right to rely on any facts, documents, evidence, or other contentions that may develop or come to its attention at a later time, and to supplement or amend the information contained in these Responses and Objections, including objections, at any time before trial in this Action should additional or different information become available. Moreover, if ECFMG at any time supplements or amends its Responses and Objections to these Interrogatories and Requests, by agreement or otherwise, ECFMG expressly reserves the right to assert any applicable objection, privilege, or other protection in connection with such supplementation or amendment.

9. ECFMG objects to the Interrogatories and Requests to the extent that they purport to require ECFMG to undertake more than a reasonable good-faith search for information within

its possession, custody, or control responsive to the Interrogatories. ECFMG expressly disclaims any obligation or ability to respond to Requests and Interrogatories with information that is in the possession, custody, or control of Plaintiffs, third-parties, or former employees, except for the period of their employment at ECFMG.

10. ECFMG objects to the Interrogatories and Requests to the extent they seek “all documents,” “all written statements,” or “all” of any type of material because the burden or expense of such discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues. Representing that “all documents,” or “all” of any type of material, falling within a description have been located or identified, rather than documents that have been located or identified after a reasonably diligent search, is not proportional to the needs of the case.

11. ECFMG objects to the Requests to the extent they purport to require ECFMG to engage in the collection or review of electronically stored information (“ESI”). Consistent with the Parties’ agreement in the Joint Report of Rule 26(f) Meeting (Dkt. No. 19), ECFMG will not collect or review ESI in order to respond to the Requests.

12. ECFMG further objects to the Interrogatories and Requests as vague and ambiguous to the extent Plaintiff does not identify with any specificity the information and material he seeks. As worded, many of the Interrogatories and Requests are so vague and ambiguous that ECFMG cannot reasonably formulate a response.

13. In making its Objections, ECFMG does not waive, or intend to waive, but rather intends to preserve and is preserving:

- a. All objections as to competency, relevance, materiality, or admissibility;



- b. All rights to object on any ground to the use of any objections, responses, or answers;
- c. All rights to object on any ground to any request for further responses to the Interrogatories or any other Interrogatories; and
- d. The right at any time to amend, correct, add to, or clarify any of the responses, objections, or answers found herein.

**SPECIFIC RESPONSES AND OBJECTIONS TO INTERROGATORIES**

**Interrogatory No. 1: WITNESSES:** State the name and address of any person whom defendant believes may have any knowledge concerning the allegations made in the Complaint of the plaintiff or the defenses made by defendant.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG further objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privileges.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows:

<i>Name</i>	<i>Address/Contact Information</i>
Kara Corrado	Through ECFMG's Counsel.
Lisa Cover	Through ECFMG's Counsel.
Dr. Orien L. Tulp	Through Plaintiff's Counsel.
USAT Faculty / Employees (current / former)	Through Plaintiff's Counsel.
USAT Students (current / former)	Through Plaintiff's Counsel.

**Interrogatory No. 2: EVIDENCE:** Identify any document, report, writing, statement, item, physical or tangible evidence which is in the possession of defendant or known to defendant, which

may be relevant to the allegations made in the Complaint of plaintiff or the defenses made by defendant.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG objects to this Interrogatory as overly broad, unduly burdensome, and/or not proportional to the needs of the case because it seeks the identity of “any” evidence “which may be relevant to the allegations made in the Complaint . . . or the defenses made by defendant,” without regard for whether such materials are in any way related to the sole remaining due process claim in the Action. ECFMG further objects to this Interrogatory in that Plaintiff does not identify with any specificity the information he seeks. As worded, the Interrogatory is so vague and ambiguous that ECFMG cannot reasonably formulate a response. ECFMG further objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privileges.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: ECFMG has already produced (1) the materials ECFMG provided to the Medical Education Credentials Committee in connection with Plaintiff’s irregular behavior hearing, (2) the materials ECFMG provided to the Medical Education Credentials Committee in connection with its review of USAT, (3) other documents relating to Plaintiff’s irregular behavior hearing, and (4) certain documents pertaining to USAT’s sponsor note in the World Directory of Medical Schools. ECFMG also refers to all of the exhibits used or cited in opposition to Plaintiff’s Motion for a Preliminary and/or Permanent Injunction and to any YouTube videos posted by USAT and/or in which Plaintiff appears.



**Interrogatory No. 3: PHOTOGRAPHS AND DIAGRAMS:** Identify any photographs, videotapes, audiotapes, slides, movies, charts or diagrams, which are in the possession of defendants or which are known to defendants.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG objects to this Interrogatory as overly broad, unduly burdensome, and/or not proportional to the needs of the case because it seeks the identity of “any” photographs and diagrams “which are in the possession of defendants or which are known to defendants,” without regard for whether such materials are in any way related to the sole remaining due process claim in the Action. ECFMG further objects to this Interrogatory to the extent it asks ECFMG to identify documents and information in the possession of Plaintiff or that are equally available to Plaintiff from other sources, including public sources. ECFMG further objects to this Interrogatory in that Plaintiff does not identify with any specificity the information he seeks. As worded, the Interrogatory is so vague and ambiguous that ECFMG cannot reasonably formulate a response. ECFMG further objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privileges.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: ECFMG has already produced (1) the materials ECFMG provided to the Medical Education Credentials Committee in connection with Plaintiff’s irregular behavior hearing, (2) the materials ECFMG provided to the Medical Education Credentials Committee in connection with its review of USAT, (3) other documents relating to Plaintiff’s irregular behavior hearing, and (4) certain documents pertaining to USAT’s sponsor note in the World Directory of Medical Schools. ECFMG also refers to all of the exhibits used or cited in opposition to Plaintiff’s Motion for a Preliminary and/or Permanent Injunction and to any YouTube videos posted by USAT and/or in which Plaintiff appears.

**Interrogatory No. 4: STATEMENTS:** Have you or any person acting on your behalf obtained from any person any statement (as defined by the Rules of Civil Procedure) or had any conversation with anyone concerning this action or its subject matter? If so, identify:

- (a) each such person;
- (b) when, where, by whom, and to whom each statement was made and whether it was reduced to writing or recorded;
- (c) any person who has custody of any such statements which was reduced to writing or recorded;
- (d) attach a copy of the statement.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG objects to this Interrogatory as overly broad, unduly burdensome, and/or not proportional to the needs of the case because it seeks the identity of “any” statement or conversation with unspecified parties “concerning this action or its subject matter,” without regard for whether such materials are in any way related to the sole remaining due process claim in the Action. ECFMG further objects to this Interrogatory in that Plaintiff does not identify with any specificity the information he seeks. As worded, the Interrogatory is so vague and ambiguous that ECFMG cannot reasonably formulate a response. ECFMG further objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privileges.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: ECFMG has already produced (1) the materials ECFMG provided to the Medical Education Credentials Committee in connection with Plaintiff’s irregular behavior hearing, (2) the materials ECFMG provided to the Medical Education Credentials Committee in connection with its review of USAT, (3) other documents relating to Plaintiff’s irregular behavior hearing, and (4) certain documents pertaining to USAT’s sponsor note in the World Directory of Medical Schools.

ECFMG also refers to all of the exhibits used or cited in opposition to Plaintiff's Motion for a Preliminary and/or Permanent Injunction and to any YouTube videos posted by USAT and/or in which Plaintiff appears. .

**Interrogatory No. 5: EXPERTS:** State the name, address and field of expertise of each expert whose testimony you intend to present at the trial of this case. State the subject matter about which the expert is expected to testify, the facts and opinions to which he or she is expected to testify, and a summary of the grounds for each opinion. Identify the expert's publications and previous cases in which the expert has appeared. Attach a copy of any report by the expert and a curriculum vitae.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG further objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privileges.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: Plaintiff has not disclosed any expert witnesses, and Plaintiff's counsel represented at the Rule 16 conference that they did not anticipate presenting any expert witnesses. ECFMG reserves the right to revisit its expert disclosures if something changes.

**Interrogatory No. 6: INSURANCE:** State the policy numbers, insurance company, and amount of coverage of any insurance policy naming a defendant as an insured, or in which a defendant has an insurable interest, or the existence of any insurance policy, which could apply to the claims of the plaintiff, including umbrella, excess, automobile, commercial and homeowner's policies. Attach a "Face Sheet" or equivalent documentation indicating the policy limits of each such insurance coverage. Indicate whether there has been a disclaimer or a reservation of rights by an insurance carrier of defendant.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG objects to this Interrogatory as vague and ambiguous with respect to the undefined term "Face Sheet." ECFMG further objects to this Interrogatory to the extent that it seeks information

protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privileges.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: ECFMG is investigating whether any insurance agreements exist under which an insurance business may be liable to satisfy all or part of a possible judgment in the Action or to indemnify or reimburse for payments made to satisfy a possible judgment in the Action. Given the ongoing and continuing nature of this investigation, ECFMG specifically reserves its right to supplement its response to this Interrogatory to reflect additional facts and documents.

**Interrogatory No. 7: TRIAL WITNESSES:** Identify each witness by name and address that defendant intends to call or subpoena at the trial or arbitration of this case.

**Response:**

ECFMG reasserts and incorporates each of the General Objections and Objections to Definitions and Instructions above. ECFMG further objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privileges. ECFMG further objects to this Interrogatory as it is premature.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: ECFMG will identify persons who it may call as fact witnesses at trial pursuant to the applicable deadlines scheduled by the Court for such disclosure at the appropriate time.

**Interrogatory No. 8: TRIAL EVIDENCE:** Identify each document, item or exhibit, which defendant intends to use, refer to, mark or introduce into evidence at deposition, trial or arbitration of this case. Attach copies of any documents, photographs or other items which will be used, referred to, or introduced.

**Response:**

ECFMG reasserts and incorporates each of the General Objections above. ECFMG further objects to this Interrogatory to the extent that it seeks information protected by the attorney-client

privilege, the attorney work-product doctrine, or other applicable privileges. ECFMG further objects to this Interrogatory as it is premature.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: ECFMG will identify its trial evidence pursuant to the applicable deadlines scheduled by the Court for such disclosure at the appropriate time.

**Interrogatory No. 9: SOURCES:** Identify all persons, documents, and sources of information that were used or consulted in answering this document, other than defendant's counsel.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG further objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privileges.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: ECFMG used the following sources of information to respond to the Interrogatories:

- Documents already produced by ECFMG, including (1) the materials ECFMG provided to the Medical Education Credentials Committee in connection with Plaintiff's irregular behavior hearing, (2) the materials ECFMG provided to the Medical Education Credentials Committee in connection with its review of USAT, (3) other documents relating to Plaintiff's irregular behavior hearing, and (4) certain documents pertaining to USAT's sponsor note in the World Directory of Medical Schools.
- Exhibits used or cited in connection with Plaintiff's Motion for a Preliminary and/or Permanent Injunction, including YouTube videos posted by USAT and/or in which Plaintiff appears.
- Documents filed in the action.

**Interrogatory No. 10: DEFENSES:** State the factual basis of any defense which defendant has asserted in a pleading, or which defendant intends to assert at trial.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG further objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privileges. ECFMG further objects to this Interrogatory to the extent it purports to compel ECFMG to draw legal conclusions in order to respond.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: The factual basis of ECFMG's defenses may be determined by examining the Background section of ECFMG's Opposition to Plaintiff's Motion for a Preliminary and/or Permanent Injunction, the transcript of the January 24, 2019 injunction hearing before Judge Beetlestone, and the materials that ECFMG has already produced. *See* Dkt. No. 12, Section II.

**Interrogatory No. 11: CONTRIBUTORY NEGLIGENCE:** If defendant alleges contributory negligence by the plaintiff, then state the factual basis for this contention.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG further objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privileges. ECFMG further objects to this Interrogatory to the extent it purports to compel ECFMG to draw legal conclusions in order to respond.

✓ Subject to and without waiver of the foregoing objections, ECFMG responds as follows: ECFMG has not alleged contributory negligence by the Plaintiff and thus will not provide the factual basis for this inapplicable defense.

**Interrogatory No. 12: DEFENDANT'S VERSION:** State briefly defendant's version of the incident described in plaintiff's Complaint, it materially differs from what plaintiff has alleged.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG objects to this Interrogatory as overly broad, unduly burdensome, and/or not proportional to the needs of the case because it seeks Defendant's version of the incident described in Plaintiff's Complaint, without regard for whether such materials are in any way related to the sole remaining due process claim in the Action. ECFMG further objects to this Interrogatory in that Plaintiff does not identify with any specificity the information he seeks. As worded, the Interrogatory is so vague and ambiguous that ECFMG cannot reasonably formulate a response. ECFMG further objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privileges.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: The answer to this Interrogatory may be determined by examining the Background section of ECFMG's Opposition to Plaintiff's Motion for a Preliminary and/or Permanent Injunction, the transcript of the January 24, 2019 injunction hearing before Judge Beetlestone, and the materials that ECFMG has already produced. *See* Dkt. No. 12, Section II.

**Interrogatory No. 13: DEFENDANT'S FILE:** Identify any document, writing or evidence, that is not privileged, which has been obtained by defendant in connection with this lawsuit and has not been previously supplied to plaintiff or by plaintiff, including any document which mentions or refers to the parties, witnesses or the subject matter of this lawsuit, or a defense asserted thereto.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG objects to this Interrogatory as overly broad, unduly burdensome, and/or not proportional to the needs of the case because it seeks the identity of "any document, writing or evidence" "which has been obtained by defendant in connection with this lawsuit," without regard for whether such materials are in any way related to the sole remaining due process claim in the Action. ECFMG



further objects to this Interrogatory in that Plaintiff does not identify with any specificity the information he seeks. As worded, the Interrogatory is so vague and ambiguous that ECFMG cannot reasonably formulate a response. ECFMG further objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privileges.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: To the extent that this Interrogatory calls for properly discoverable information, such information would be subsumed within Plaintiff's other, more specific discovery requests.

**Interrogatory No. 14: LIABILITY BY ANOTHER:** If defendant maintains that someone or some entity, who is not a party to this lawsuit, may be liable to plaintiff, then fully identify that person or entity, and state the factual basis for the alleged liability.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG further objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privileges. ECFMG further objects to this Interrogatory to the extent it purports to compel ECFMG to draw legal conclusions in order to respond.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: Plaintiff is responsible for the consequences of his own actions, including providing false information to ECFMG.

**Interrogatory No. 15: DESIGNATION OF DEFENDANT:** If it is maintained that defendant has been improperly named or designated in this lawsuit, state the correct name of defendant and indicate whether defendant will stipulate to amend the Complaint to reflect the correct name. Has defendant's insurance carrier indicated that insurance coverage is not applicable based on an improper designation of defendant in this lawsuit?

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG further objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privileges.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: ECFMG previously moved for the dismissal of Dr. William W. Pinsky as a defendant in this Action. The Court granted ECFMG's motion in part and dismissed the sole claim against Dr. Pinsky on March 26, 2019. Dkt. No. 29. Moreover, ECFMG is not properly a defendant in this lawsuit, and all claims against ECFMG fail as a matter of law.

**Interrogatory No. 16: PRIVILEGED MATERIAL:** Identify any terms or material relevant to this lawsuit which defendant has not supplied, because defendant believes that such material is privileged, confidential or not subject to discovery, except material generated by counsel, and the legal basis for withholding the material.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG objects to this Interrogatory as overly broad, unduly burdensome, and/or not proportional to the needs of the case because it seeks the identity of "any" material relevant to this lawsuit, without regard for whether such materials are in any way related to the sole remaining due process claim in the Action. ECFMG further objects to this Interrogatory in that Plaintiff does not identify with any specificity the information he seeks. As worded, the Interrogatory is so vague and ambiguous that ECFMG cannot reasonably formulate a response. ECFMG further objects to this Interrogatory to the extent it seeks to impose obligations that are inconsistent with or greater than those imposed by the Federal Rules of Civil Procedure, the Local Rules of the Eastern District of Pennsylvania, and/or the Court's rules and procedures. ECFMG further objects to this Interrogatory to the extent

that it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privileges.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: ECFMG is open to meeting and conferring with Plaintiff regarding a mutual exchange of privilege logs, if any.

**SPECIFIC RESPONSES AND OBJECTIONS TO  
REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. **TRIAL, DEPOSITION OR ARBITRATION EVIDENCE.** All documents, exhibits, items or evidence of any type which defendant intends to use, refer to, mark or introduce at deposition, arbitration, or trial of this case. Please list any evidentiary material which defendant has or is supplying to plaintiffs. **Plaintiffs will object to any evidence, which defense counsel has not sent directly to plaintiffs' counsel in discovery in a timely manner, including documents obtained from third parties by subpoena or request to produce. This request for production is a continuing request, which requires defendant through defense counsel, to supplement their answers and produce directly to plaintiffs' counsel in a timely manner, any evidence received after defendant's response herein.**

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG objects to this Request to the extent it seeks information that is in the possession, custody, or control of Plaintiff. ECFMG further objects to this Request to the extent that it seeks information or documents that are protected from disclosure by the attorney-client privilege and/or the work-product doctrine. ECFMG further objections to this Request to the extent it seeks to impose obligations that are inconsistent with or greater than those imposed by the Federal Rules of Civil Procedure, the Local Rules of the Eastern District of Pennsylvania, and/or the Court's rules and procedures.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: ECFMG has already produced (1) the materials ECFMG provided to the Medical Education Credentials Committee in connection with Plaintiff's irregular behavior hearing, (2) the materials

ECFMG provided to the Medical Education Credentials Committee in connection with its review of USAT, (3) other documents relating to Plaintiff's irregular behavior hearing, and (4) certain documents pertaining to USAT's sponsor note in the World Directory of Medical Schools. ECFMG specifically reserves the right to use any materials that are in the public domain or that are in the possession, custody, or control of Plaintiff, have been used at any hearing or in connection with any briefing in this Action, or that have otherwise been produced in connection with the Action. ECFMG will provide its trial exhibit list pursuant to the applicable deadlines scheduled by the Court for such disclosure at the appropriate time.

2. PHOTOGRAPHS: All photographs and diagrams of any person, place or thing which is directly or indirectly related to the incident set forth in the plaintiff's Complaint, or in defendant's response.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG objects to this Request as overly broad, unduly burdensome, and/or not proportional to the needs of the case because it seeks the production of "all" photographs and diagrams "directly or indirectly related to the incident set forth in the plaintiff's Complaint," without regard for whether such materials are in any way related to the sole remaining due process claim in the Action. ECFMG further objects to this Request in that Plaintiff does not identify with any specificity the materials he seeks. As worded, the Request is so vague and ambiguous that ECFMG cannot reasonably formulate a response. ECFMG further objects to this Request to the extent it seeks information that is in the possession, custody, or control of Plaintiff. ECFMG further objects to this Request to the extent that it seeks information or documents that are protected from disclosure by the attorney-client privilege and/or the work-product doctrine.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows:

To the extent that this Request calls for properly discoverable documents, such documents would be subsumed within Plaintiff's other, more specific discovery requests.

3. STATEMENTS: All written statements (signed or unsigned), descriptions of statements, records and written accounts of investigations relating to this lawsuit.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG objects to this Request as overly broad, unduly burdensome, and/or not proportional to the needs of the case because it seeks the production of "all" written statements, descriptions of statements, records, and written accounts "relating to this lawsuit," without regard for whether such materials are in any way related to the sole remaining due process claim in the Action. ECFMG further objects to this Request in that Plaintiff does not identify with any specificity the materials he seeks. As worded, the Request is so vague and ambiguous that ECFMG cannot reasonably formulate a response. ECFMG further objects to this Request to the extent it seeks information that is in the possession, custody, or control of Plaintiff. ECFMG further objects to this Request to the extent that it seeks information or documents that are protected from disclosure by the attorney-client privilege and/or the work-product doctrine.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows:

ECFMG has already produced (1) the materials ECFMG provided to the Medical Education Credentials Committee in connection with Plaintiff's irregular behavior hearing, (2) the materials ECFMG provided to the Medical Education Credentials Committee in connection with its review of USAT, (3) other documents relating to Plaintiff's irregular behavior hearing, and (4) certain documents pertaining to USAT's sponsor note in the World Directory of Medical Schools. ECFMG specifically reserves the right to use any materials that are in the public domain or that

are in the possession, custody, or control of Plaintiff, have been used at any hearing or in connection with any briefing in this Action, or that have otherwise been produced in connection with the Action.

4. **WITNESS DOCUMENTS:** Any documents or writings, which mention or refer to the parties in this lawsuit or any witness in this lawsuit, including **all medical records obtained by the defendant**, which refer to plaintiffs or the incident involving plaintiffs, or to defendant or the incident involving defendant.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG objects to this Request as overly broad, unduly burdensome, and/or not proportional to the needs of the case because it seeks the production of any materials “which mention or refer to the parties in this lawsuit or any witness in this lawsuit,” “plaintiffs or the incident involving plaintiffs, or to defendant or the incident involving defendant,” without regard for whether such materials are in any way related to the sole remaining due process claim in the Action. ECFMG further objects to this Request in that Plaintiff does not identify with any specificity the materials he seeks. As worded, the Request is so vague and ambiguous that ECFMG cannot reasonably formulate a response. ECFMG further objects to this Request to the extent it seeks information that is in the possession, custody, or control of Plaintiff. ECFMG further objects to this Request to the extent that it seeks information or documents that are protected from disclosure by the attorney-client privilege and/or the work-product doctrine. ECFMG further objects to this Request to the extent that it is not tailored to the facts or circumstances of the Action.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: ECFMG has already produced (1) the materials ECFMG provided to the Medical Education Credentials Committee in connection with Plaintiff’s irregular behavior hearing, (2) the materials ECFMG provided to the Medical Education Credentials Committee in connection with its review

of USAT, (3) other documents relating to Plaintiff's irregular behavior hearing, and (4) certain documents pertaining to USAT's sponsor note in the World Directory of Medical Schools. ECFMG specifically reserves the right to use any materials that are in the public domain or that are in the possession, custody, or control of Plaintiff, have been used at any hearing or in connection with any briefing in this Action, or that have otherwise been produced in connection with the Action.

5. **INSURANCE:** The "face-sheet" of any insurance policies, including excess or umbrella policies, under which the defendant was an insured or had an insurable interest on or about the time of the incident described in the Complaint by the plaintiffs, including the policy limits of all insurance policies, and any supporting documentation if there is a reservation of rights or disclaimer by an insurance carrier.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG objects to this Request as vague and ambiguous with respect to the undefined term "face-sheet." ECFMG further objects to this Request to the extent that it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privileges.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: ECFMG is investigating whether any insurance agreements exist under which an insurance business may be liable to satisfy all or part of a possible judgment in the Action or to indemnify or reimburse for payments made to satisfy a possible judgment in the Action. Given the ongoing and continuing nature of this investigation, ECFMG specifically reserves its right to supplement its response to this Request to reflect additional facts and documents.

6. **DOCUMENTS AND TANGIBLE EVIDENCE:** All writings, items, memoranda, data and tangible things which relate directly or indirectly to the incident set forth in the plaintiff's Complaint or to the answer to a Complaint or to any defenses asserted in this lawsuit. List and describe any items which can not be photocopied.



**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG objects to this Request as overly broad, unduly burdensome, and/or not proportional to the needs of the case because it seeks the production of “all” documents and tangible evidence “which relate directly or indirectly to the incident set forth in the plaintiff’s Complaint,” to the answer, or to any defenses asserted in this lawsuit, without regard for whether such materials are in any way related to the sole remaining due process claim in the Action. ECFMG further objects to this Request in that Plaintiff does not identify with any specificity the materials he seeks. As worded, the Request is so vague and ambiguous that ECFMG cannot reasonably formulate a response. ECFMG further objects to this Request to the extent it seeks information that is in the possession, custody, or control of Plaintiff. ECFMG further objects to this Request to the extent that it seeks information or documents that are protected from disclosure by the attorney-client privilege and/or the work-product doctrine.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: ECFMG has already produced (1) the materials ECFMG provided to the Medical Education Credentials Committee in connection with Plaintiff’s irregular behavior hearing, (2) the materials ECFMG provided to the Medical Education Credentials Committee in connection with its review of USAT, (3) other documents relating to Plaintiff’s irregular behavior hearing, and (4) certain documents pertaining to USAT’s sponsor note in the World Directory of Medical Schools. ECFMG specifically reserves the right to use any materials that are in the public domain or that are in the possession, custody, or control of Plaintiff, have been used at any hearing or in connection with any briefing in this Action, or that have otherwise been produced in connection with the Action.

7. **EVIDENCE IN POSSESSION OF DEFENDANT:** Produce any item, (or identify any item which can not be produced) material or tangible evidence in the possession of defendant or defendant's agents, which is not privileged, which may lead to discoverable evidence in this lawsuit, or which is relevant to a claim, defense or the subject matter of this lawsuit, including but not limited to, any photographs, statements, contracts, accident reports, letters, diagrams, manuals, memos, rules or regulations, investigation reports, agreements, models, tapes, personnel files, or computer-generated material.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG objects to this Request as overly broad, unduly burdensome, and/or not proportional to the needs of the case because it seeks the production of any evidence in possession of Defendant, without regard for whether such materials are in any way related to the sole remaining due process claim in the Action. ECFMG objects to this Request to the extent it seeks information that is in the possession, custody, or control of Plaintiff. ECFMG further objects to this Request to the extent that it seeks information or documents that are protected from disclosure by the attorney-client privilege and/or the work-product doctrine.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: To the extent that this Request calls for properly discoverable documents, such documents would be subsumed within Plaintiff's other, more specific discovery requests.

8. **SUBPOENAS AND DOCUMENT REQUESTS:** Copies of all subpoenas and request for production issued by defendant or its agents in relation to this case, including witness or deposition subpoenas, and subpoenas requesting records or documents.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG objects to this Request to the extent it seeks information that is in the possession, custody, or control of Plaintiff. ECFMG further objects to this Request to the extent that it seeks information or documents that are protected from disclosure by the attorney-client privilege and/or the work-product doctrine.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: ECFMG has already served Plaintiff with (1) Defendants' First Set of Interrogatories and First Set of Requests for Production of Documents to Dr. Orien L. Tulp, (2) a Notice of Deposition of Plaintiff Dr. Orien L. Tulp, and (3) a Subpoena to Testify at a Deposition to Carla Konyk Tulp (which was later withdrawn).

**SPECIFIC RESPONSES AND OBJECTIONS TO REQUESTS FOR ADMISSIONS  
WITH SUPPLEMENTAL INTERROGATORIES AND REQUESTS  
FOR PRODUCTION OF DOCUMENTS**

1. **Admission:** Defendants have in their possession or in the possession of their employees, the complete file of Tony Brown.

1(a). If the answer to the proceeding request for admissions is anything other than an unqualified "admitted," state all facts upon which the answer is based. Produce and attach copies of any documents, evidence or items reviewed, or relied upon, in your answer.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG further objects to this Request on the grounds that it is vague, ambiguous, and lacking particularity as it does not define the term "complete file" or specifically identify the individual referred to as "Tony Brown." ECFMG further objects to this Request as overly broad, unduly burdensome, and/or not proportional to the needs of the case because it seeks information on an individual who has never been mentioned in this Action before, without regard for whether such individual is related to the sole remaining due process claim in the Action. ECFMG further objects to this Request to the extent it purports to be more than a Request for Admission. ECFMG further objects to this Request to the extent that it seeks information or documents that are protected from disclosure by the attorney-client privilege and/or the work-product doctrine.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: Following a reasonable inquiry, ECFMG lacks sufficient information to admit or deny this Request

because (1) the Request is unclear insofar as the term “complete file” is undefined and capable of multiple, inconsistent meanings, (2) the Request does not identify “Tony Brown” with specificity, and (3) the Request appears to be irrelevant to the sole remaining due process claim in the Action.

2. **Admission:** List all schools that the ECFMG have brought charges against, from 1903 to the present time and the allegations against them

2(a). If the answer to the proceeding request for admissions is anything other than an unqualified “admitted,” state all facts upon which the answer is based. Produce and attach copies of any documents, evidence or items reviewed, or relied upon, in your answer.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG further objects to this Request as overly broad, unduly burdensome, and/or not proportional to the needs of the case because it seeks information extending over more than a one-hundred-year time period, without regard for whether such information is related to the sole remaining due process claim in the Action. ECFMG further objects to this Request as stated because it is an interrogatory, and not a proper request for admission, and therefore the Request is nonsensical. ECFMG further objects to this Request to the extent it purports to be more than a Request for Admission. ECFMG further objects to this Request to the extent that it seeks information or documents that are protected from disclosure by the attorney-client privilege and/or the work-product doctrine.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: ECFMG applies the “irregular behavior” standard to individuals, not institutions. This is evident from the definition of “Irregular behavior” in ECFMG’s Policies and Procedures Regarding Irregular Behavior. *See* Dkt. No. 12-3 at 27.

3. **Admission:** Kara Corrado is not an attorney.

3(a). If the answer to the proceeding request for admissions is anything other than an unqualified “admitted,” state all facts upon which the answer is based. Produce and attach copies of any documents, evidence or items reviewed, or relied upon, in your answer.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG objects to this Request to the extent it seeks information that is in the possession, custody, or control of Plaintiff. ECFMG further objects to this Request to the extent it purports to be more than a Request for Admission. ECFMG further objects to this Request to the extent that it seeks information or documents that are protected from disclosure by the attorney-client privilege and/or the work-product doctrine.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows:

Admitted. [Kara Corrado has a Juris Doctor degree and is not a practicing attorney. *See* Jan. 24, 2019 Hr’g Tr. 36:12-15.

4. **Admission:** The term “campus” is not defined by the ECFMG.

4(a). If the answer to the proceeding request for admissions is anything other than an unqualified “admitted,” state all facts upon which the answer is based. Produce and attach copies of any documents, evidence or items reviewed, or relied upon, in your answer.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG further objects to this Request as overly broad, unduly burdensome, and/or not proportional to the needs of the case because it seeks information, without regard for whether such information is related to the sole remaining due process claim in the Action. ECFMG further objects to this Request to the extent it purports to be more than a Request for Admission. ECFMG further objects to this Request to the extent that it seeks information or documents that are protected from disclosure by the attorney-client privilege and/or the work-product doctrine.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: Denied. ECFMG uses the word campus in its common parlance. ECFMG directs Plaintiff to the Merriam-Webster Dictionary for the definition of campus: “(1) the grounds and buildings of a university, college, or school”; “(2) a university, college, or school viewed as an academic, social, or spiritual entity”; “(3) grounds that resemble a campus.” This is the same common meaning with which Dr. Tulp has used the word “campus” prior to this litigation. *See* Dkt. No. 12 at 8 nn.4-5; Dkt. No. 12-6; Jan. 24, 2019 Hr’g Tr. 79:21-24, 87:1-8.

5. **Admission:** “Irregular behavior” is a term that is used for actions that are not in accordance with the policies of the ECFMG.

5(a). If the answer to the proceeding request for admissions is anything other than an unqualified “admitted,” state all facts upon which the answer is based. Produce and attach copies of any documents, evidence or items reviewed, or relied upon, in your answer.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG further objects to this Request as overly broad, unduly burdensome, and/or not proportional to the needs of the case because it seeks information, without regard for whether such information is related to the sole remaining due process claim in the Action. ECFMG further objects to this Request to the extent it purports to be more than a Request for Admission. ECFMG further objects to this Request to the extent that it seeks information or documents that are protected from disclosure by the attorney-client privilege and/or the work-product doctrine.

Subject to and without waiver of these objections, ECFMG responds as follows: ECFMG admits in part this Request, as actions that are not in accordance with the policies of ECFMG can constitute “Irregular behavior,” although this is not a complete definition. By way of further response, ECFMG directs Plaintiff to the definition of “Irregular behavior” in its Policies and Procedures Regarding Irregular Behavior, which ECFMG has previously provided to Plaintiff:

*“Irregular behavior”* includes all actions or attempted actions on the part of applicants, examinees, potential applicants, others when solicited by an applicant and/or examinee, or any other person that would or could subvert the examination, certification or other processes, programs or services of ECFMG, including, but not limited to, the ECFMG Exchange Visitor Sponsorship Program, ECFMG International Credentials Services (EICS), the Electronic Portfolio of International Credentials (EPIC), and Electronic Residency Application Service (ERAS) Support Services at ECFMG. Such actions or attempted actions are considered irregular behavior, regardless of when the irregular behavior occurs, and regardless of whether the individual is certified by ECFMG. Examples of irregular behavior include, but are not limited to, submission of any falsified or altered document to ECFMG, whether submitted by the individual or by a third party, such as a medical school, on behalf of the individual; failing to comply with United States Medical Licensing Examination or ECFMG policies, procedures, and/or rules; falsification of information on applications, submissions, or other materials to ECFMG; taking an examination when not eligible to do so, or submission of any falsified or altered ECFMG document to other entities or individuals.”

See Dkt. No. 12-3 at 27.

6. **Admission:** “Irregular behavior” is directed to individuals who are involved in the process of application for ECFMG certification.

6(a). If the answer to the proceeding request for admissions is anything other than an unqualified “admitted,” state all facts upon which the answer is based. Produce and attach copies of any documents, evidence or items reviewed, or relied upon, in your answer.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG further objects to this Request as overly broad, unduly burdensome, and/or not proportional to the needs of the case because it seeks information, without regard for whether such information is related to the sole remaining due process claim in the Action. ECFMG further objects to this Request to the extent it purports to be more than a Request for Admission. ECFMG further objects to this Request to the extent that it seeks information or documents that are protected from disclosure by the attorney-client privilege and/or the work-product doctrine.

Subject to and without waiver of these objections, ECFMG responds as follows: ECFMG admits in part this Request, as “Irregular behavior” can be “directed to individuals who are



involved in the process of application for ECFMG certification,” although this is not a complete list of those who ECFMG may find to have engaged in irregular behavior. By way of further response, ECFMG directs Plaintiff to the definition of “Irregular behavior” in its Policies and Procedures Regarding Irregular Behavior, which ECFMG has previously provided to Plaintiff:

*“Irregular behavior includes all actions or attempted actions on the part of applicants, examinees, potential applicants, others when solicited by an applicant and/or examinee, or any other person that would or could subvert the examination, certification or other processes, programs or services of ECFMG, . . .”*

See Dkt. No. 12-3 at 27 (emphasis added).

7. **Admission:** If a foreign medical student or graduate does not obtain certification by ECFMG, it would be difficult for that person to practice medicine in the United States.

7(a). If the answer to the proceeding request for admissions is anything other than an unqualified “admitted,” state all facts upon which the answer is based. Produce and attach copies of any documents, evidence or items reviewed, or relied upon, in your answer.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG further objects to this Request as overly broad, unduly burdensome, and/or not proportional to the needs of the case because it seeks information, without regard for whether such information is related to the sole remaining due process claim in the Action. ECFMG further objects to this Request because it requires knowledge and information outside of ECFMG’s present possession, custody, or control. ECFMG further objects to this Request as vague and ambiguous to the extent it uses the undefined term “difficult,” which may have multiple conflicting meanings. ECFMG further objects to this Request as vague and ambiguous to the extent it asks ECFMG to opine on the difficulty a hypothetical foreign medical student or graduate with unstated credentials or abilities may have in practicing medicine in the United States. ECFMG further objects to this Request to the extent it purports to be more than a Request for Admission. ECFMG further objects

to this Request to the extent that it seeks information or documents that are protected from disclosure by the attorney-client privilege and/or the work-product doctrine.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: ECFMG is not able to admit or deny the Request as phrased because it seeks an admission regarding the difficulties that may be faced by a hypothetical foreign medical student or graduate with unstated credentials or abilities. By way of further response, ECFMG does not control the various third parties (*e.g.*, ACGME, state medical licensing boards) who exercise their discretion in choosing what weight (if any) to afford ECFMG certification.

8. **Admission:** The effort of the committee who heard the allegations against Dr. Tulp was not a committee where things were submitted as evidence, but basically a proceeding where Dr. Tulp has an opportunity to make a statement on his behalf.

8(a). If the answer to the proceeding request for admissions is anything other than an unqualified “admitted,” state all facts upon which the answer is based. Produce and attach copies of any documents, evidence or items reviewed, or relied upon, in your answer.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG further objects to this Request to the extent it is vague, compound, ambiguous, and lacking particularity because of the undefined terms “the effort of the committee,” and “submitted as evidence.” ECFMG further objects to this Request to the extent it purports to be more than a Request for Admission. ECFMG further objects to this Request to the extent that it seeks information or documents that are protected from disclosure by the attorney-client privilege and/or the work-product doctrine.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows: ECFMG denies the Request as stated. ECFMG directs Plaintiff to ECFMG’s Policies and Procedures Regarding Irregular Behavior, which provides that an individual charged with alleged irregular behavior is given “an opportunity to provide written explanation and to present other

relevant information” to the Medical Education Credentials Committee and “may also request the opportunity to appear personally” before the Committee, “and may be represented by legal counsel.” ECFMG also directs Plaintiff to the transcript of the hearing on Plaintiff’s Motion for a Preliminary and/or Permanent Injunction, during which Kara Corrado testified that although there is not a process during which documents are introduced as evidence at the hearing, the Committee considers evidence that is provided to it and the individual before the hearing. Jan. 24, 2019 Hr’g Tr. 23:8–17, 26: 24–27:10, 28:18–29:3.

9. **Admission:** In 2018, ECFMG determined that Dr. Tulp engaged in “irregular behavior” in connection with providing false information to the ECFMG.

9(a). If the answer to the proceeding request for admissions is anything other than an unqualified “admitted,” state all facts upon which the answer is based. Produce and attach copies of any documents, evidence or items reviewed, or relied upon, in your answer.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG objects to this Request to the extent it seeks information that is in the possession, custody, or control of Plaintiff. ECFMG further objects to this Request to the extent it purports to be more than a Request for Admission. ECFMG further objects to this Request to the extent that it seeks information or documents that are protected from disclosure by the attorney-client privilege and/or the work-product doctrine.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows:

Admitted.

10. **Admission:** The WDMS, the World Directory of Medical Schools, is a Directory that ECFMG co-sponsors and has an office in the same building as ECFMG.

10(a). If the answer to the proceeding request for admissions is anything other than an unqualified “admitted,” state all facts upon which the answer is based. Produce and attach copies of any documents, evidence or items reviewed, or relied upon, in your answer.

**Response:**

ECFMG reasserts and incorporates the General Objections as set forth above. ECFMG further objects to this Request to the extent it is vague, compound, ambiguous, and lacking particularity because of the undefined term “co-sponsors,” and ECFMG objects to Plaintiff’s characterization of the term “co-sponsors.” For purposes of responding to this Request, ECFMG interprets the term “co-sponsor” to mean “sponsor” as that term is used in the ECFMG Information Booklet. *See* Dkt. No. 12-4 at 5. ECFMG further objects to this Request to the extent it purports to be more than a Request for Admission. ECFMG further objects to this Request because it requires knowledge and information outside of ECFMG’s present possession, custody, or control.

Subject to and without waiver of the foregoing objections, ECFMG responds as follows:

ECFMG admits that it is one of several organizations that “sponsor” the WDOMS. ECFMG denies that the WDOMS has an office in the same building as ECFMG.

DATED: April 24, 2019

/s/ Elisa P. McEnroe

Elisa P. McEnroe, PA Bar No. 206143  
 Matthew D. Klayman, PA Bar No. 319105  
 MORGAN, LEWIS & BOCKIUS, LLP  
 1701 Market Street  
 Philadelphia, PA 19103-2921  
 Telephone: +1.215.963.5917  
 Facsimile: +1.215.963.5001  
 elisa.mcenroe@morganlewis.com  
 matthew.klayman@morganlewis.com

*Attorney for the Educational Commission for  
 Foreign Medical Graduates*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 24, 2019, a copy of the foregoing was served via electronic and/or regular mail on all counsel of record.

/s/ Elisa P. McEnroe  
Elisa P. McEnroe

LAW OFFICES OF WILLIAM C. REIL

BY: William C. Reil, Esquire

Identification No. 26833

1515 Market Street, Suite 1200

Philadelphia, PA 19102

215-564-1635

ATTORNEY FOR PLAINTIFF

DR. ORIEN L. TULP

President of the

University of Science, Arts, and Technology

4288 Youngfield Street

Wheat Ridge, CO 80033

vs.

EDUCATIONAL COMMISSION FOR

FOREIGN MEDICAL GRADUATES

3624 Market Street

Philadelphia, PA 19104

and

DR. WILLIAM W. PINSKY, PRESIDENT

AND CEO

Educational Commission for

Foreign Medical Graduates

3624 Market Street

Philadelphia, PA 19104

: UNITED STATES DISTRICT  
: COURT FOR THE EASTERN  
: DISTRICT OF PENNSYLVANIA

: CIVIL ACTION NO.

: JURY TRIAL DEMANDED

**PLAINTIFFS' REQUEST FOR ADMISSIONS WITH SUPPLEMENTAL  
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS  
DIRECTED TO ALL DEFENDANTS**

Plaintiffs, by their undersigned attorney, hereby serves upon all defendants, this Request for Admissions with Interrogatories and Request for Production of Documents, pursuant to the Pennsylvania of Civil Procedure. Each matter set forth herein in the Request for Admissions shall be deemed admitted, unless you serve an answer or objection upon counsel within thirty (30) days of service hereof, or within forty-five (45) days from the date of service of original process.

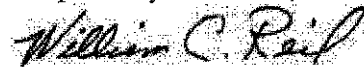
1. **Admission:** Defendants have in their possession or in the possession of their employees, the complete file of Tony Brown.
- 1(a). If the answer to the proceeding request for admissions is anything other than an unqualified "admitted," state all facts upon which the answer is based. Produce and attach copies of any documents, evidence or items reviewed, or relied upon, in your answer.

2. **Admission:** List all schools that the ECFMG have brought charges against, from 1903 to the present time and the allegations against them
- 2(a). If the answer to the proceeding request for admissions is anything other than an unqualified "admitted," state all facts upon which the answer is based. Produce and attach copies of any documents, evidence or items reviewed, or relied upon, in your answer.
3. **Admission:** Kara Corrado is not an attorney.
- 3(a). If the answer to the proceeding request for admissions is anything other than an unqualified "admitted," state all facts upon which the answer is based. Produce and attach copies of any documents, evidence or items reviewed, or relied upon, in your answer.
4. **Admission:** The term "campus" is not defined by the ECFMG.
- 4(a). If the answer to the proceeding request for admissions is anything other than an unqualified "admitted," state all facts upon which the answer is based. Produce and attach copies of any documents, evidence or items reviewed, or relied upon, in your answer.
5. **Admission:** "Irregular behavior" is a term that is used for actions that are not in accordance with the policies of the ECFMG.
- 5(a). If the answer to the proceeding request for admissions is anything other than an unqualified "admitted," state all facts upon which the answer is based. Produce and attach copies of any documents, evidence or items reviewed, or relied upon, in your answer.
6. **Admission:** "Irregular behavior" is directed to individuals who are involved in the process of application for ECFMG certification.
- 6(a). If the answer to the proceeding request for admissions is anything other than an unqualified "admitted," state all facts upon which the answer is based. Produce and attach copies of any documents, evidence or items reviewed, or relied upon, in your answer.
7. **Admission:** If a foreign medical student or graduate does not obtain certification by ECFMG, it would be difficult for that person to practice medicine in the United States.
- 7(a). If the answer to the proceeding request for admissions is anything other than an unqualified "admitted," state all facts upon which the answer is based. Produce and attach copies of any documents, evidence or items reviewed, or relied upon, in your answer.



8. **Admission:** The effort of the committee who heard the allegations against Dr. Tulp was not a committee where things were submitted as evidence, but basically a proceeding where Dr. Tulp has an opportunity to make a statement on his behalf.
- 8(a). If the answer to the proceeding request for admissions is anything other than an unqualified "admitted," state all facts upon which the answer is based. Produce and attach copies of any documents, evidence or items reviewed, or relied upon, in your answer.
9. **Admission:** In 2018, ECFMG determined that Dr. Tulp engaged in "irregular behavior" in connection with providing false information to the ECFMG.
- 9(a). If the answer to the proceeding request for admissions is anything other than an unqualified "admitted," state all facts upon which the answer is based. Produce and attach copies of any documents, evidence or items reviewed, or relied upon, in your answer.
10. **Admission:** The WDMS, the World Directory of Medical Schools, is a Directory that ECFMG co-sponsors and has an office in the same building as ECFMG.
- 10(a). If the answer to the proceeding request for admissions is anything other than an unqualified "admitted," state all facts upon which the answer is based. Produce and attach copies of any documents, evidence or items reviewed, or relied upon, in your answer.

Respectfully submitted,



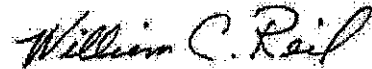
---

William C. Reil  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the attached document (s) was served upon all other parties or their counsel of record by:

_____	Regular First Class Mail
_____X_____	Electronic Mail
_____	Certified Mail
_____	Hand-Delivered
_____	Electronic Filing
_____	Federal Express



William C. Reil, Esquire  
Attorney for Plaintiff  
1515 Market Street, Suite 1200  
Philadelphia, PA 19102  
215-564-1635  
ID: 26833  
03/22/19

## LAW OFFICES OF WILLIAM C. REIL

BY: William C. Reil, Esquire

Identification No. 26833

1515 Market Street, Suite 1200

Philadelphia, PA 19102

215-564-1635

ATTORNEY FOR PLAINTIFF

Dr. Orien L. Tulp	:	UNITED STATES DISTRICT
President of the	:	COURT FOR THE EASTERN
University of Science, Arts,	:	DISTRICT OF PENNSYLVANIA
and Technology	:	
4288 Youngfield Street	:	
Wheat Ridge, CO 80033	:	CIVIL ACTION NO.
vs.	:	
Educational Commission for	:	
Foreign Medical Graduates	:	
3624 Market Street	:	
Philadelphia, PA 19104	:	
and	:	
Dr. William W. Pinsky	:	
President and CEO	:	
Educational Commission for	:	
Foreign Medical Graduates	:	
3624 Market Street	:	
Philadelphia, PA 19104	:	JURY TRIAL DEMANDED

**PLAINTIFFS' INTERROGATORIES ADDRESSED TO ALL DEFENDANTS**

Plaintiffs, by the undersigned attorney, hereby serve upon all defendants these Interrogatories, pursuant to the Federal Rules of Civil Procedure. You are hereby notified to Answer the following Interrogatories within thirty (30) days from the date hereof. These Interrogatories are continuing. You are, therefore, also notified to supplement or amend your answers promptly upon discovery of information that any answers are inaccurate or incomplete. The term "Defendant," for the purposes of these Interrogatories, includes the agents, servants and employees of all defendants in this lawsuit.

**PLAINTIFFS' INTERROGATORIES ADDRESSED TO ALL DEFENDANTS**

1. WITNESSES: State the name and address of any person whom defendant believes may have any knowledge concerning the allegations made in the Complaint of the plaintiff or the defenses made by defendant.
2. EVIDENCE: Identify any document, report, writing, statement, item, physical or tangible evidence which is in the possession of defendant or known to defendant, which may be relevant to the allegations made in the Complaint of plaintiff or the defenses made by defendant.
3. PHOTOGRAPHS AND DIAGRAMS: Identify any photographs, videotapes, audiotapes, slides, movies, charts or diagrams, which are in the possession of defendants or which are known to defendants.

4. STATEMENTS: Have you or any person acting on your behalf obtained from any person any statement (as defined by the Rules of Civil Procedure) or had any conversation with anyone concerning this action or its subject matter? If so, identify:

(a) each such person;

(b) when, where, by whom, and to whom each statement was made and whether it was reduced to writing or recorded;

(c) any person who has custody of any such statements which was reduced to writing or recorded;

(d) attach a copy of the statement.

5. EXPERTS: State the name, address and field of expertise of each expert whose testimony you intend to present at the trial of this case. State the subject matter about which the expert is expected to testify, the facts and opinions to which he or she is expected to testify, and a summary of the grounds for each opinion. Identify the expert's publications and previous cases in which the expert has appeared. Attach a copy of any report by the expert and a curriculum vitae.

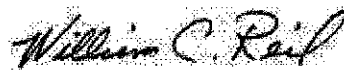
6. INSURANCE: State the policy numbers, insurance company, and amount of coverage of any insurance policy naming a defendant as an insured, or in which a defendant has an insurable interest, or the existence of any insurance policy, which could apply to the claims of the plaintiff, including umbrella, excess, automobile, commercial and homeowner's policies. Attach a "Face Sheet" or equivalent documentation indicating the policy limits of each such insurance coverage. Indicate whether there has been a disclaimer or a reservation of rights by an insurance carrier of defendant.
7. TRIAL WITNESSES: Identify each witness by name and address that defendant intends to call or subpoena at the trial or arbitration of this case.
8. TRIAL EVIDENCE: Identify each document, item or exhibit, which defendant intends to use, refer to, mark or introduce into evidence at deposition, trial or arbitration of this case. Attach copies of any documents, photographs or other items which will be used, referred to, or introduced.

9. SOURCES: Identify all persons, documents, and sources of information that were used or consulted in answering this document, other than defendant's counsel.
10. DEFENSES: State the factual basis of any defense which defendant has asserted in a pleading, or which defendant intends to assert at trial.
11. CONTRIBUTORY NEGLIGENCE: If defendant alleges contributory negligence by the plaintiff, then state the factual basis for this contention.
12. DEFENDANT'S VERSION: State briefly defendant's version of the incident described in plaintiff's Complaint, if it materially differs from what plaintiff has alleged.



13. DEFENDANT'S FILE: Identify any document, writing or evidence, that is not privileged, which has been obtained by defendant in connection with this lawsuit and has not been previously supplied to plaintiff or by plaintiff, including any document which mentions or refers to the parties, witnesses or the subject matter of this lawsuit, or a defense asserted thereto.
  
14. LIABILITY BY ANOTHER: If defendant maintains that someone or some entity, who is not a party to this lawsuit, may be liable to plaintiff, then fully identify that person or entity, and state the factual basis for the alleged liability.
  
15. DESIGNATION OF DEFENDANT: If it is maintained that defendant has been improperly named or designated in this lawsuit, state the correct name of defendant and indicate whether defendant will stipulate to amend the Complaint to reflect the correct name. Has defendant's insurance carrier indicated that insurance coverage is not applicable based on an improper designation of defendant in this lawsuit?
  
16. PRIVILEGED MATERIAL: Identify any terms or material relevant to this lawsuit which defendant has not supplied, because defendant believes that such material is privileged, confidential or not subject to discovery, except material generated by counsel, and the legal basis for withholding the material.

Date: 03/15/19



William C. Reil  
Attorney for Plaintiffs

LAW OFFICES OF WILLIAM C. REIL

BY: William C. Reil, Esquire

Identification No. 26833

1515 Market Street, Suite 1200

Philadelphia, PA 19102

215-564-1636

ATTORNEY FOR PLAINTIFF

Dr. Orien L. Tulp	:	UNITED STATES DISTRICT
President of the	:	COURT FOR THE EASTERN
University of Science, Arts,	:	DISTRICT OF PENNSYLVANIA
and Technology	:	
4288 Youngfield Street	:	
Wheat Ridge, CO 80033	:	CIVIL ACTION NO.
vs.	:	
Educational Commission for	:	
Foreign Medical Graduates	:	
3624 Market Street	:	
Philadelphia, PA 19104	:	
and	:	
Dr. William W. Pinsky	:	
President and CEO	:	
Educational Commission for	:	
Foreign Medical Graduates	:	
3624 Market Street	:	
Philadelphia, PA 19104	:	JURY TRIAL DEMANDED

**PLAINTIFFS' REQUEST FOR PRODUCTION OF DOCUMENTS**  
**ADDRESSED TO ALL DEFENDANTS**

Plaintiffs, by the undersigned attorney, hereby serve upon all defendants this Request for Production of Documents, pursuant to the Federal Rules of Civil Procedure. These documents and/or items are to be produced at the Offices of plaintiffs' counsel at 1515 Market St., Suite 1200, Philadelphia, PA 19102, and this request for production answered within thirty (30) days of the date of service hereof. Such requests are continuing up to and at the time of trial. The term "Defendant," for the purposes of these documents, includes the agents, servants and employees of all defendants in this lawsuit.

**PLAINTIFFS' REQUEST FOR PRODUCTION OF DOCUMENTS**  
**ADDRESSED TO ALL DEFENDANTS**

1. **TRIAL, DEPOSITION OR ARBITRATION EVIDENCE.** All documents, exhibits, items or evidence of any type which defendant intends to use, refer to, mark or introduce at deposition, arbitration, or trial of this case. Please list any evidentiary material which defendant has or is supplying to plaintiffs.  
**Plaintiffs will object to any evidence, which defense counsel has not sent directly to plaintiffs' counsel in discovery in a timely manner, including documents obtained from third parties by subpoena or request to produce. This request for production is a continuing request, which requires defendant through defense counsel, to supplement their answers and produce directly to plaintiffs' counsel in a timely manner, any evidence received after defendant's response herein.**
2. **PHOTOGRAPHS:** All photographs and diagrams of any person, place or thing which is directly or indirectly related to the incident set forth in the plaintiff's Complaint, or in defendant's response.
3. **STATEMENTS:** All written statements (signed or unsigned), descriptions of statements, records and written accounts of investigations relating to this lawsuit.
4. **WITNESS DOCUMENTS:** Any documents or writings, which mention or refer to the parties in this lawsuit or any witness in this lawsuit, including **all medical records obtained by the defendant**, which refer to plaintiffs or the incident involving plaintiffs, or to defendant or the incident involving defendant.
5. **INSURANCE:** The ~~"face-sheet"~~ of any insurance policies, including excess or umbrella policies, under which the defendant was an insured or had an insurable interest on or about the time of the incident described in the Complaint by the plaintiffs, including the policy limits of all insurance policies, and any supporting documentation if there is a reservation of rights or disclaimer by an insurance carrier.
6. **DOCUMENTS AND TANGIBLE EVIDENCE:** All writings, items, memoranda, data and tangible things which relate directly or indirectly to the incident set forth in the plaintiff's Complaint or to the answer to a Complaint or to any defenses asserted in this lawsuit. List and describe any items which can not be photocopied.
7. **EVIDENCE IN POSSESSION OF DEFENDANT:** Produce any item, (or identify any item which can not be produced) material or tangible evidence in the possession of defendant or defendant's agents, which is not privileged, which may lead to discoverable evidence in this lawsuit, or which is relevant to a claim, defense or the subject matter of this lawsuit, including but not limited to, any photographs, statements, contracts, accident reports, letters, diagrams, manuals, memos, rules or regulations, investigation reports, agreements, models, tapes, personnel files, or computer-generated material.

8. SUBPOENAS AND DOCUMENT REQUESTS: Copies of all subpoenas and request for production issued by defendant or its agents in relation to this case, including witness or deposition subpoenas, and subpoenas requesting records or documents.

Date: 03/15/19

A handwritten signature in black ink, reading "William C. Reil". The signature is written in a cursive, slightly slanted style. Below the signature is a horizontal line.


William C. Reil, Esquire  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I certify that I will serve in accordance with P.A.R.C.P. 440 all parties not served electronically. I further certify that a true and correct copy of the attached document (s) was served upon all other parties or their counsel of record by:

<u>          X          </u>	Regular First Class Mail
<u>                          </u>	Facsimile
<u>                          </u>	Certified Mail
<u>                          </u>	Hand-Delivered
<u>          X          </u>	Email
<u>                          </u>	Electronic Filing

Date: 03/15/19

  
\_\_\_\_\_  
William C. Reil, Esquire  
Attorney for Plaintiffs

# USAT

**MONTSERRAT**

## UNIVERSITY OF SCIENCE, ARTS & TECHNOLOGY, MONTSERRAT

Main Campus  
Camelot Estate, P.O. Box 506, South Mayfield Estate Drive, Olveston, Montserrat  
US Information Office  
5400 Ward Road, Building 3-150, Arvada, CO 80002

Please be advised that the following chart summarizes the negative change in USAT basic science enrollments **before and after September 14, 2018**. That is the date that the first red paragraph was added to USAT's Sponsor Notes Page on the World Directory of Medical Schools list by the ECFMG.

USAT Total Number of Students Enrolled in Basic Science Courses Prior to September 14, 2018	USAT Total Number of Students Enrolled in Basic Science Courses from September 15, 2018 up to Dec. 15, 2018. (Fall Semester 2018)	Percentage Change
419	372	-11.21%

*This is Lifelong Learning. This is USAT.*

USA (FL Cert Nr. L12000078671), Montserrat (Cert Nr. 17-2003).  
Member Institution of Med Ed Central, WHO Global Alliance on Healthcare, WDOMS World Medical Schools, ASIC (UK) & IPSP (ITALY), AAHEA. USAT is IMED/FAIMER listed.

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*Excellence and Professionalism in Research and Education.*

01/2019



# USAT

## MONTSERRAT

# UNIVERSITY OF SCIENCE, ARTS & TECHNOLOGY, MONTSERRAT

Main Campus  
Camelot Estate, P.O. Box 506, South Mayfield Estate Drive, Olveston, Montserrat  
US Information Office  
5400 Ward Road, Building 3-150, Arvada, CO 80002

Please be advised that the following chart summarizes the negative change in USAT basic science course enrollments **before and after December 31, 2018**. That is the date that the ECFMG removed their sponsorship of USAT, as declared on USAT's Sponsor Notes Page on the World Directory of Medical Schools, that USAT courses would no longer be valid, disallowing USAT students from taking the USMLE Examinations after that date.

USAT Total Number of Students Enrolled in Basic Science Courses up until December 31, 2018.	USAT Total Number of Students Enrolled in Basic Science Courses from January 1, 2019 to April 30, 2019. (Spring Semester 2019)	Percentage Change
372	181	-51.34%

Please be advised that the following chart summarizes the negative change in USAT clinical enrollments **before and after December 31, 2018**. That is the date that the ECFMG removed their sponsorship of USAT, as declared on USAT's Sponsor Notes Page on the World Directory of Medical Schools, that USAT courses would no longer be valid, disallowing USAT students from taking the USMLE Examinations after that date.

USAT Total Number of Students Enrolled in Clinical Science Courses up until December 31, 2018.	USAT Total Number of Students Enrolled in Clinical Science Courses from January 1, 2019 to April 30, 2019. (Spring Semester 2019)	Percentage Change
TBD		

This is Lifelong Learning. This is U.S.A.T.

USA (FL Cert Nr. L12000078671), Montserrat (Cert Nr. 17-2003).  
Member Institution of Med Ed Central, WHO Global Alliance on Healthcare, WDOMS World Medical Schools, ASIC (UK) & IPSP (ITALY), AAHEA. USAT is IMED/FAIMER listed.

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01/2019



# USAT

## MONTSERRAT

# UNIVERSITY OF SCIENCE, ARTS & TECHNOLOGY, MONTSERRAT

Main Campus  
Camelot Estate, P.O. Box 506, South Mayfield Estate Drive, Olveston, Montserrat  
US Information Office  
5400 Ward Road, Building 3-150, Arvada, CO 80002

Please be advised that the following chart summarizes the negative change in new USAT applications received from January 01, 2018 up to February 28, 2019.

USAT Monthly Enrollments from January 2018 to January 2019	Number of Applications Received	Percentage Change
January 1- 31, 2018	75	
February 1-28, 2018	47	
March 1-31, 2018	58	
April 1-30, 2018	62	
May 1-31, 2018	84	
June 1-30, 2018	67	
July 1-31, 2018	75	
August 1-31, 2018	65	
September 1-13, 2018	26	
September 14-30, 2018	29	-1.81%
October 1-31, 2018	43	-21.81%
November 1-30, 2018	28	-34.88%
December 1-31, 2018	17	-39.29%
January 1-31, 2019	09	-47.05%
February 1-27, 2019	07	-2.22%

*This is Lifelong Learning. This is USAT.*

USA (FL Cert Nr. L12000078671), Montserrat (Cert Nr. 17-2003).  
Member Institution of Med Ed Central, WHO Global Alliance on Healthcare, WDOMS World Medical Schools, ASIC (UK) & IPSP (ITALY), AAHEA. USAT is IMED/FAIMER listed.

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Excellence and Professionalism in Research and Education.

01/2019

Affidavit of Dr. Orien L. Tulp  
State Of Colorado, Jefferson, County

Before me, the undersigned notary, on this day personally appeared, Dr. Orien L. Tulp, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

1. My name is Orien L. Tulp. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. I am Professor and President of USAT Montserrat. USAT was established on September 26, 2003. Exhibit 1, I own a 50% interest in USAT. USAT has a University based medical school duly licensed by the Government of Montserrat authorities. Exhibit 2. As part of my duties as USAT president, I was to be aware and review the number of students enrolled as well as oversee the general administration and operations of the school. USAT admits a significant proportion of non-traditional students including minorities. The school is culturally diverse as evidenced by over 50% percent minority students including Caribbean Nationals, approximately 10% students over 50 years of age, and over 75% percent licensed allied medical and Healthcare Professionals at the time of their admission.
3. My formal education includes a PH.D. and other degrees. My experience that makes me qualified to be President of USAT is a military and Civilian career of over forty years duration retiring with the rank of Colonel, and my Civilian Career as a Full Professor at a top tier University. My military career consisted of administrative supervision, command, and training of Physicians and other military medical personnel, and my Civilian career as a Professor included research and teaching of Physicians and other health care professionals and including extensive publishing in the scientific literature. Exhibit 3 (copies of military rank and awards) I have personal knowledge of the USAT records and procedures due to my position as president of the school.
4. The Educational Commission for Foreign Medical Graduates (ECFMG) is a Pennsylvania registered non-profit 501(3) entity. The ECFMG has been granted, by all the state medical boards, the exclusive authority to decide which international medical graduates are permitted to take the various tests administered by the USMLE and NBME. Exhibit 4, (ECFMG Fact Sheet) An international medical graduate cannot access graduate medical training in the United States without successfully passing a series of three examinations. The ECFMG is the gatekeeper for entry to take the various examinations. Without successfully passing the USMLE examinations, the international medical graduate cannot enter the United States medical training programs to commence post graduate specialty training. Without entry into the training system, the International medical students cannot be licensed to practice medicine in the United States.



5. The ECFMG defines irregular behavior to include all actions or attempted actions on the part of applicants, examinees, potential applicants, others when solicited by an applicant and/or other programs, or services of the ECFMG. This definition also includes falsification of information on applications, completed by the applicants for the examinations. Exhibit 5 (Policies and Procedures Regarding Irregular Behavior).

6. The ECFMG's policies and procedures regarding irregular behavior include the following:

- a. The ECFMG staff will investigate any allegations of irregular behavior.
- b. If the ECFMG staff finds that there exists a reasonable basis to conclude that an individual has engaged in irregular behavior, the matter will be referred by the staff to the Medical Education Credentials Committee of the ECFMG.
- c. The Credentials Committee is the body delegated by the ECFMG to make a fact determination.
- d. The ECFMG staff is required to give the person charged with irregular behavior notice of the charge and evidence.
- e. The person charged with allegations of irregular behavior has the right to appear personally before the Medical Education Credentials Committee.
- f. The Medical Education Credential Committee is required to base its decision on a preponderance of the evidence. Exhibit 5.

7. The ECFMG staff, prior to any notice or hearing, placed on the World Directory of Medical Schools (WDOMS) website page for USAT, beginning on or before September 14, 2018, a notice that USAT students were being subjected to special investigation and enhanced screening. Exhibit 6 (copy of website notice).

8. Prior to placing the notice on the website, the ECFMG staff did not notify USAT or myself that the ECFMG had a concern, despite the observation that for the preceding 15 years not a single error or concern had ever been reported to USAT by the ECFMG. The ECFMG's staff took disciplinary action, prior to any notice or a hearing before the ECFMG Credential's committee, by placing damaging information on the Sponsor Note section for USAT on the WDOMS website.

9. As a result of the ECFMG's staff posting the warning on the WDOMS website my interest in USAT was severely devalued and may be depleted.

10. My sworn deposition testimony established how and why the decrease in value occurred after the publication on the WDOMS website of on or before Sept. 14, 2018. Dr. Tulp's Deposition transcript Page 84, lines 2-14. The majority of Students disenrolled, stop paying tuition and left for other schools as a result of the September 14, 2018 notice. Dr. Tulp's Deposition page 71, lines 19-24, page 72 lines 1-3.

11. Prior to the November 28, 2018 hearing, I was not supplied with any affidavits from any students. The ECFMG admits in its Summary Judgment Motion that the ECFMG had received 300 student affidavits. ECFMG's Summary Judgment Motion, Page 11, Issues 28.

12. The claim by the ECFMG that it provided me with all material to be considered prior to the November 28, 2018 hearing is disputed. At no time was I supplied with a definition of "campus," let alone "branch campus." My lawyer requested the ECFMG define campus prior to the November 28, 2018 hearing. The ECFMG staff refused to supply a definition. Instead the attorney conducting the hearing was attempting to have me define "campus". USAT does conduct "on-line" classes with it's private, Montserrat based Satellite Communications network including the Basic Medical Sciences of the medical curriculum, thereby negating a requirement for a fixed campus.

13. The November 28, 2018 hearing was conducted by an ECFMG lawyer that was demanding to cross examine me, but the ECFMG supplied no witnesses for my lawyers to cross examine.

14. The lawyer who conducted the hearing for the ECFMG Credential's committee presented no evidence for the committee to consider.

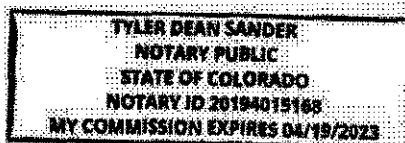
15. The November 28, 2018 hearing was abruptly terminated by the ECFMG's attorney when my lawyer started going through the evidence that in part was only produced after 10 AM that morning. When the first two pages were identified as a letter from a person with whom I had no contact or knowledge of, the lawyer abruptly terminated the hearing over my lawyer's protest, and before my 20 minutes of allotted time had elapsed.

16. There are no written rules by the ECFMG on who has the burden of proof. The hearing was conducted by ECFMG counsel as if I had the obligation to prove my innocence alone, without any evidence, witnesses, or cross-examination allowed.

  
Dr. Orien L. Tulp

Sworn to and subscribed before me by Dr. Orien L. Tulp on June 3rd, 2019

  
Notary Public in and for The State of Colorado My Commission Expires: 04/19/2023





Bill Reil <billreillaw@gmail.com>

---

**sponsor note as of Oct 15, 2018**

1 message

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Orien Tulp <o.tulp@usat.edu>

Sun, May 26, 2019 at 2:26 PM

To: Bill Reil <billreillaw@gmail.com>, swatemd <swatemd@aol.com>

This is the text that should be included in the exhibits, it appeared from mid Oct 2018 until Jan 3, 2019, after Dr Pinsky received his subpoena.

- **Note: As of January 1, 2019, students and graduates of this medical school with a graduation year of 2019 and later are not eligible to apply to ECFMG for ECFMG Certification, which also renders them ineligible to apply to ECFMG for the United States Medical Licensing Examinations (USMLE) as a step toward ECFMG Certification.**
- **Currently, students and graduates of USAT are subject to enhanced procedures that must be met in order to be eligible to apply for ECFMG Certification related services, including but not limited to: ECFMG Certification, USMLE examinations that lead to ECFMG Certification, and Electronic Residency Application Service (ERAS®) Support Services. ECFMG will provide information and instructions to applicants upon receipt of application.**
- **Note: In 2018, ECFMG determined that certain staff / officials of the University of Science, Arts and Technology (USAT) engaged in irregular behavior in connection with providing false information and documents to ECFMG.**

Orien L Tulp, PhD, MD, FACN, CNS  
Professor and President  
USAT Montserrat  
[www.usat.edu](http://www.usat.edu)  
Cell: 727-252-6210

November 28, 2018

1 MEETING OF THE ECFMG MEDICAL  
2 EDUCATION CREDENTIALS COMMITTEE

3  
4 RE: ORIEN L. TULP, USAT

5 - - -  
6 NOVEMBER 28, 2018  
7 - - -

8 Hearing taken pursuant to notice,  
9 was held at RITTENHOUSE HOTEL, 210 West  
10 Rittenhouse Square, Philadelphia,  
11 Pennsylvania, commencing at 10:00 a.m.,  
12 on the above date, before LISA MARIE  
13 CAPALDO, RPR, a Registered Professional  
14 Reporter and Notary Public in and for the  
15 Commonwealth of Pennsylvania.

16  
17  
18  
19  
20  
21 GOLKOW LITIGATION SERVICES  
22 877.370.3377 ph | 917.591.5672 fax  
23 Deps@golkow.com  
24

November 28, 2018

1 APPEARANCES:

2 ECFMG STAFF

3 Mr. William W. Pinsky

Mr. Dennis M. Donohue

4 Ms. Kara Corrado

Ms. Lisa L. Cover

5 Ms. Svetlana Gridneva

Mr. Scott Mealey

6 Ms. Rosemary Carlin

7

ECFMG Board Members

8

Dr. Maryellen Gusic

9 Dr. Ronald R. Blanck

Dr. Barbara Barzansky

10 Dr. Peter Buckley

Dr. Andrew Filak

11 Dr. Ram Krishna

Dr. Dotun Ogunyemi

12 Dr. James Pelegano

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November 28, 2018

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Statement of:  
  
ORIEN L. TULP, USAT  
  
By Mr. Swate

November 28, 2018

1 - - -  
2 PROCEEDING

3 - - -  
4 O R I E N T U L P, Sworn.

5 - - -  
6 DR. GUSIC: We will begin by  
7 asking the committee members and  
8 the staff to introduce themselves.  
9 We will swear in Dr. Tulp and then  
10 if there are any opening  
11 statements.

12 MS. McENROE: Elisa McEnroe,  
13 outside counsel for ECFMG.

14 MS. KATZ: I'm Francis Katz.  
15 I'm the general counsel at ECFMG.

16 DR. CRAIG: Steve Craig,  
17 board member.

18 DR. OGUNYEMI: Dr. Ogunyemi,  
19 ECFMG board member.

20 DR. BUCKLEY: Peter Buckley,  
21 I'm also an ECFMG board member.

22 DR. PELEGANO: Jim Pelegano,  
23 ECFMG board member.

24 DR. KRISHNA: Dr. Krishna,

November 28, 2018

1 board member.

2 DR. FILIK: Andy Filik,  
3 ECFMG board member.

4 DR. PINSKY: Bill Pinsky,  
5 President and CEO of ECFMG.

6 DR. GUSIC: Maryellen Gusic,  
7 board member and chair of this  
8 committee.

9 DR. BLANCK: Ronald Blanck,  
10 chair and board member of this  
11 committee.

12 DR. BARZANSKY: Barbara  
13 Barzansky, ECFMG board member.

14 MS. CORRADO: Kara Corrado,  
15 ECFMG staff.

16 MS. COVER: Lisa Cover,  
17 ECFMG staff.

18 MR. DONOHUE: Dennis  
19 Donohue, ECFMG staff.

20 MS. GRIDNEVA: Svetlana  
21 Gridneva, ECFMG staff.

22 MS. CARLIN: Rosemary  
23 Carlin, ECFMG staff.

24 MS. CORRADO: Just briefly,

November 28, 2018

1 I'm just going to iterate the  
2 allegations for the committee.  
3 The allegation is that Dr. Orien  
4 Tulp, professor and president of  
5 USAT engaged in irregular behavior  
6 in connection with providing false  
7 information to ECFMG, specifically  
8 that Dr. Tulp provided false  
9 information to ECFMG regarding  
10 USTAT's United States branch  
11 campuses and certifying to the  
12 attendance dates of several USTAT  
13 students and graduates when ECFMG  
14 has information that these  
15 students were not attending USTAT  
16 during some of the time periods to  
17 which Dr. Tulp certified.

18 Dr. Tulp is here today along  
19 with his attorneys to address  
20 these allegations and to answer  
21 any questions that the committee  
22 may have.

23 DR. GUSIC: Opening  
24 statements.

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1 MR. SWATE: Thank you. I  
2 asked the name of the officer  
3 outside the door, and he refused  
4 to give me his name. Could you  
5 tell me who the officer outside  
6 the door is?

7 MS. McENROE: It's a  
8 security officer we've brought in  
9 for our own protection in case we  
10 need it throughout our day's  
11 proceedings. He's an off-duty  
12 Philadelphia police officer.

13 MR. SWATE: First, I would  
14 like to ask for the -- I've asked  
15 and I've asked and I've asked for  
16 the packet that was presented to  
17 the committee members. I would  
18 like a copy of the packet, the  
19 information that was submitted to  
20 the committee members so that I  
21 will know what was considered by  
22 the committee before we came here  
23 today because you're considering  
24 information that I may or may not

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1 know about. And that's  
2 fundamentally unfair to my client,  
3 for my client to have to defend  
4 against potential information that  
5 we don't have.

6 First, I would ask for a  
7 copy of that.

8 MS. McENROE: There's  
9 actually a black binder right in  
10 front of you. We also have  
11 provided that on more than one  
12 occasion prior to this proceeding,  
13 which is our usual practice even  
14 without you asking. That's what  
15 we do.

16 MR. SWATE: Where is the  
17 letter that you sent to the  
18 committee members addressing this?

19 MS. McENROE: The materials  
20 presented to the committee  
21 regarding this circumstance with  
22 Dr. Tulp's charges of irregular  
23 behavior are presented in that  
24 binder to you.

November 28, 2018

1 MR. SWATE: I'm asking you  
2 for the letter you sent to the  
3 committee members.

4 MS. McENROE: I don't know  
5 what you're talking about.

6 MR. SWATE: You didn't send  
7 them a letter explaining what this  
8 was?

9 MS. McENROE: We sent those  
10 materials.

11 MR. SWATE: What about the  
12 letter that went with the  
13 materials?

14 MS. McENROE: Those are the  
15 materials including any  
16 correspondence with it.

17 MR. SWATE: All the  
18 correspondence would be included  
19 with this material?

20 MS. McENROE: Correct.

21 MR. SWATE: I'm sorry.  
22 Where is the correspondence that  
23 you sent to the committee?

24 MS. McENROE: This is the



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1 same material that you were  
2 provided. November 14th you got  
3 it by e-mail, and November 15th  
4 you got it by Federal Express.

5 MR. SWATE: I'm asking for  
6 the letters that you sent to these  
7 committee members. You just  
8 didn't send this out to the  
9 committee members just blindly.

10 MS. McENROE: Unfortunate  
11 for them, potentially there's a  
12 lot of materials they have to  
13 review, and they carefully review  
14 the materials presented to them as  
15 presented to you. We get an  
16 electronic copy, myself included  
17 which you were provided by e-mail  
18 on November 14th.

19 MR. SWATE: So you're  
20 telling me that you did not send  
21 them a letter explaining this  
22 material and explaining the  
23 allegation to the committee  
24 members.

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1 MS. McENROE: That material  
2 is as presented to the committee.

3 MR. SWATE: You're not  
4 answering my question.

5 MS. McENROE: I'm not here  
6 to answer your questions, sir.  
7 We're here for your client to  
8 explain to us the charges of  
9 irregular behavior against him.

10 If you have an opening  
11 statement you would like to make,  
12 we're interested in hearing it.  
13 Our committee has questions for  
14 your client, and then we will  
15 consider the charges of irregular  
16 behavior.

17 MR. SWATE: This committee  
18 has no jurisdiction over Dr. Tulp.  
19 We showed up today as it stands  
20 for negotiation. You all have no  
21 legal jurisdiction to determine  
22 anything.

23 So accordingly, please be  
24 advised that we're not waiving

November 28, 2018

1           because we're here any  
2           jurisdictional issues that may be  
3           addressed at another forum at  
4           another day.

5                       Since the ECFMG has made the  
6           allegation, it should have the  
7           sole and exclusive burden of  
8           proof. So who is presenting the  
9           evidence against Dr. Tulp?

10                      This is not the U.S.  
11           Congress where you can make blind  
12           allegations and attempt to have  
13           the person prove they are not  
14           guilty. And that's what's  
15           occurring here today, just blatant  
16           accusations and then assuming he's  
17           guilty. And you have him come  
18           here for 20 minutes to explain why  
19           he's not guilty.

20                      You have a duty of  
21           presenting your evidence, credible  
22           evidence before Dr. Tulp has to  
23           answer anything. It's your  
24           burden.

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1                   Now, you claim you are  
2                   basing this on the preponderance  
3                   of evidence. What evidence are  
4                   you presenting here today that Dr.  
5                   Tulp violated anything? None.

6                   Also, there appears to be a  
7                   co-mingling of the prosecutorial  
8                   and jury functions. You are both  
9                   making the claims and acting as  
10                  judge and jury.

11                  We have asked for discovery  
12                  of documents, especially any  
13                  letters or correspondence that  
14                  have been sent to the committee  
15                  members. The claim that you just  
16                  sent the committee members this  
17                  without any explanation doesn't  
18                  meet any kind of test of  
19                  credibility.

20                  The ECFMG is either acting  
21                  as quasi government entity or  
22                  acting under a contract basis.  
23                  Now, you claim that you are a  
24                  private nonprofit entity. So the

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1           only reason that you could be  
2           interacting with Dr. Tulp is on  
3           the basis of contract. Where is  
4           the contract?

5                     Dr. Tulp's doesn't have a  
6           contract with you all. So you  
7           have no right to tortuously  
8           interfere with his business  
9           practices or tortuously interfere  
10          with his students.

11                    ECFMG has printed and  
12          published derogatory information  
13          about USAT. Whether it's true or  
14          not true, at least the target of  
15          those accusations should have had  
16          the opportunity to address those  
17          accusations before you go out and  
18          attempt to ruin the school, which  
19          is what you have done causing  
20          probably millions of dollars worth  
21          of damages.

22                    If you're not a quasi  
23          government entity, everybody in  
24          this room is going to be liable

November 28, 2018

1           for whatever damages we can prove.  
2           You've already prejudged the case  
3           by taking action against USAT by  
4           refusing to release documents of  
5           their students. Totally have  
6           refused to release documents of  
7           students the students are entitled  
8           to have released.

9                       Again, repeating myself,  
10           you're either a quasi government  
11           agency or you are a private  
12           agency. A private agency you got  
13           to have a contract. Quasi  
14           government agency you got to have  
15           at least an assemblance of due  
16           process which there's none here.

17                      I asked for the rules and  
18           regulations and the protocols for  
19           these meetings. Apparently, there  
20           is none other than what's in the  
21           eyes of the beholders of the  
22           people who run the ECFMG.

23                      What's the protocol? I  
24           asked for the agenda. I got a

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1           brief statement to show up at  
2           8:45. And here we are at  
3           ten o'clock, total disrespectful  
4           to my client and myself to have us  
5           show up at 8:45 and then be  
6           ten o'clock before you have us  
7           come in and address you.

8                       So we have not received the  
9           rules and regulations for the  
10          hearing nor have we seen any right  
11          that you have other than  
12          essentially blackmailing the  
13          students and telling the students,  
14          well, if you don't send in these  
15          forms, we're going to hold your  
16          records hostage, which has  
17          resulted in students either being  
18          accepted for residency and not  
19          being able to continue with the  
20          residency or not being able to be  
21          interviewed for the residency.

22                      That is our opening  
23          statement. If you have any  
24          questions, you can address them to



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1 me. Dr. Tulp will not be  
2 answering any questions.

3 MS. McENROE: Mr. Swate, do  
4 you have any substantive response  
5 or statement with respect to the  
6 charges of irregular behavior  
7 against your client?

8 We've heard your procedural  
9 concerns. And just for the  
10 purposes of the record, we  
11 disagree across the board with  
12 your allegations and your  
13 statements about the state of  
14 affairs. I think for everybody's  
15 time I'm not going to go through  
16 them and enumerate each and every  
17 single one of them.

18 If and when we ever ended up  
19 dealing with these issues in the  
20 court of law, we would deal with  
21 them then and we feel very  
22 confident --

23 MR. SWATE: I can assure you  
24 we're going to end up in federal

November 28, 2018

1 court.

2 MS. McENROE: I let you  
3 speak. Can you let me speak?

4 MR. SWATE: I'm sorry.

5 MS. McENROE: Do you have  
6 any statement with regard to the  
7 actual substantive allegations of  
8 irregular behavior?

9 MR. SWATE: We can go  
10 through this page by page.

11 MS. McENROE: I don't mean  
12 to go through it page by page.  
13 Are you here today saying that --  
14 is it Dr. Tulp? I would say Tulp  
15 with an L.

16 DR. TULP: It's Tulp.

17 MS. McENROE: Are you saying  
18 that Dr. Tulp did not provide  
19 incorrect information to ECFMG  
20 with regard to branch campuses in  
21 the United States?

22 MR. SWATE: Show me your  
23 evidence that he did.

24 MS. McENROE: We have e-mail

November 28, 2018

1           correspondence from him in all  
2           caps saying that there were not  
3           campuses in the United States.  
4           And we have significant evidence  
5           to the contrary. We were  
6           wondering if --

7                     MR. SWATE: What's your  
8           definition of campus?

9                     MS. McENROE: Maybe that's  
10          something you can illuminate for  
11          us about what your client's view  
12          is of a campus, whether there was  
13          education taking place in the  
14          United States for USTAT.

15                    MR. SWATE: The burden of  
16          proof is not on Dr. Tulp. The  
17          burden of proof is on the ECFMG.

18                    Now, Dr. Tulp is not going  
19          to address a nebulous definition  
20          of campuses. You show me your  
21          written definition of campuses and  
22          we'll address that.

23                    MS. McENROE: Did USTAT  
24          provide any student with any

November 28, 2018

1 medical school basic science  
2 education in the United States?

3 MR. SWATE: Well, yes, it  
4 did.

5 MS. McENROE: He's shaking  
6 his head, no, and you just said,  
7 yes. So maybe you should let your  
8 client speak to respond.

9 MR. SWATE: Dr. Tulp is not  
10 going to be talking today. The  
11 next time you hear him talk is  
12 going to be in federal court.

13 MS. McENROE: So, yes, there  
14 was education in the United  
15 States?

16 MR. SWATE: There was no  
17 campus in the United States.

18 MS. McENROE: So my question  
19 was, was there any education for  
20 basic medical sciences provided in  
21 the United States?

22 MR. SWATE: What do you mean  
23 by education?

24 MS. McENROE: Were there any

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1 live lectures provided in the  
2 United States for USAT?

3 MR. SWATE: My  
4 understanding is the lectures were  
5 for some extent was prepared by  
6 the Internet, that type of thing.

7 MS. McENROE: That was not  
8 responsive to my question. My  
9 question was --

10 MR. SWATE: You're not  
11 cross-examining me, Counsel.

12 MS. McENROE: Well, I'm  
13 asking you questions and trying to  
14 be more specific --

15 MR. SWATE: We can't answer  
16 the questions because you haven't  
17 defined what campus is. You  
18 haven't defined what the  
19 regulations for having an off-site  
20 campus where you allowed other  
21 schools to have off-site campuses,  
22 but you attacked USTAT for some  
23 reason.

24 Now, you cannot disagree

November 28, 2018

1           that you have allowed other  
2           schools to have off-site campuses  
3           due to natural problems. You've  
4           been told what the natural  
5           problems were.

6                   MS. McENROE: That was not  
7           my question. My question was,  
8           were there any live lectures  
9           provided to students of USTAT or  
10          basic medical sciences in the  
11          United States?

12                   MR. SWATE: I'm not a  
13          witness. So you don't get to  
14          cross-examine me.

15                   MS. McENROE: I may not be  
16          able to ask you questions as a  
17          witness. I would normally ask  
18          your client.

19                   MR. SWATE: You're not going  
20          to be able to do that because you  
21          haven't given me enough  
22          information to prepare my client.  
23          This star chamber proceedings,  
24          he's not going to participate in.

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1 MS. McENROE: Despite the  
2 four inches of paper --

3 MR. SWATE: Let's go through  
4 each of the --

5 MS. McENROE: You had some  
6 concerns that by not taking you  
7 exactly at 8:45 when we asked that  
8 you be here for a 9:00 hearing  
9 until 10:00 was a waste of time.  
10 We apologize if you feel that way.  
11 That was not at all the intention.  
12 This is a busy committee. We  
13 don't have the time or the man  
14 with to sit here and go through  
15 every single page that we provided  
16 you weeks ago.

17 MR. SWATE: I'm prepared to  
18 go through every page of this.

19 MS. McENROE: Tell me where  
20 in there it proves that your  
21 client did not provide any medical  
22 school education in the United  
23 States.

24 MR. SWATE: He doesn't have



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1 the burden of proof.

2 MS. McENROE: We're just  
3 going around in circles. I don't  
4 know that it's going to be much  
5 more helpful to try and proceed.

6 MR. SWATE: I'm willing to  
7 go through every page of this.

8 MS. McENROE: To what end?  
9 You're not answering my questions.  
10 What are you hoping to get out of  
11 every single page of that?

12 If you want to sit here and  
13 look for something specific, tell  
14 me. We've all read the materials.  
15 We can help direct you.

16 Take a look at Appendix E at  
17 the e-mail from your client  
18 saying, it is not a campus. Our  
19 only campus is located in  
20 Olveston, Montserrat, British West  
21 Indies.

22 My questions are trying to  
23 understand whether there was  
24 medical school education in the

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1 United States.

2 MR. SWATE: That's not what  
3 -- what you're trying to do is ask  
4 that question and then leap frog  
5 to make like that's the campus.

6 Give me your definition of  
7 what a campus is and then give me  
8 the cases in which you've allowed  
9 campuses to operate outside of  
10 their original address.

11 MS. McENROE: Perhaps your  
12 client, if we would be allowed,  
13 could provide us an explanation of  
14 what he meant by campus in this  
15 e-mail because the committee is  
16 interested in hearing that.

17 MR. SWATE: I would like to  
18 know what your definition of  
19 campus is.

20 MS. McENROE: He's the one  
21 who used the word here. I'm  
22 interested to know what he means  
23 by it.

24 MR. SWATE: I'm asking you,

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1           what's your definition of campus?  
2           Secondly, what's the exceptions to  
3           having an off-site campus?

4                   MS. MCENROE: We appreciate  
5           you being here today. We're  
6           working on trying to understand  
7           the facts and circumstances in  
8           this case. Apparently, we're  
9           going to be left with a cold  
10          record because your client is  
11          refusing to answer any questions.

12                   I think at this time it  
13          makes sense, unless there's any  
14          closing statement you want to  
15          make, that we adjourn.

16                   MR. SWATE: ECFMG is  
17          adjourning this without us having  
18          the ability to go through their  
19          efforts.

20                   MS. MCENROE: Is there  
21          anything in particular you want to  
22          go through? We provided this to  
23          you --

24                   MR. SWATE: I want to go

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1 through the whole thing.

2 MS. McENROE: Start on page  
3 one. What is it you want to talk  
4 to us about it?

5 MR. SWATE: The matter has  
6 been brought to the CIE's  
7 attention. Where is the letter or  
8 whatever information was brought  
9 to the attention?

10 MS. McENROE: We're not here  
11 to answer questions, sir. If you  
12 have a closing statement or  
13 something specific you want to  
14 point out to us so we understand  
15 the allegations better that are  
16 lodged against your client, that  
17 would be helpful.

18 That's why we're here today,  
19 the due process you're saying that  
20 you wanted. We're here to try to  
21 understand what it is that you're  
22 trying to do here.

23 And candidly, I appreciate  
24 you advocating on behalf of your

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1 client. It's not productive here  
2 if we can't understand the  
3 underlying facts as your client  
4 means them and wants ECFMG to  
5 understand them.

6 So if this is your position  
7 that you're just going to come  
8 here and obstruct, then that's  
9 just how it's going to be and  
10 we're not wasting this committee's  
11 time. They have a busy agenda,  
12 and we've got to keep going.

13 MR. SWATE: It's a waste of  
14 the committee's time when you're  
15 going to destroy somebody's good  
16 name and good reputation without  
17 telling them what you're claiming.  
18 At least in Texas, before we  
19 execute somebody, we at least tell  
20 them what the claim is for  
21 executing them.

22 You've refused. You've  
23 stone walled me on the procedures.  
24 I've asked for written procedures

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1           for this committee. Apparently,  
2           there's none. It's whatever you  
3           want to make them.

4                     MS. McENROE: Sir, you've  
5           gotten the policy and procedures  
6           on irregular behavior multiple  
7           times. You'd like to say that the  
8           record says what you say it says.  
9           It just doesn't.

10                    We're trying to follow the  
11           best procedure we possibly can,  
12           and you and your client are  
13           obstructing us in being able to  
14           collect the information. At this  
15           point, I don't think that it's  
16           productive to continue the  
17           proceeding.

18                    MR. SWATE: We're entitled  
19           to know what procedure this  
20           committee is operating under. You  
21           just can't operate under whatever  
22           you want to make it.

23                    MS. McENROE: You've gotten  
24           the policies and procedures.

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1 MR. SWATE: No, I haven't.  
2 I've gotten --

3 MS. McENROE: They're  
4 available on the Internet.

5 MR. SWATE: I have received  
6 broad statements, you can do  
7 whatever you want.

8 MS. McENROE: The record  
9 will reflect --

10 MR. SWATE: And that's not a  
11 written policy and procedure. And  
12 that will not stand up under any  
13 theory.

14 MS. McENROE: We've provided  
15 them to you in writing and the  
16 link to the URL where they are  
17 available publically on the  
18 Internet. I don't think at this  
19 point there's anything else that's  
20 worth us discussing at this  
21 moment. Thank you.

22 MR. SWATE: You're  
23 terminating --

24 MS. McENROE: Yes, I'm



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~~XXX~~

1 terminating the proceeding.

2 MR. SWATE: ECFMG is  
3 terminating this prior to us  
4 presenting our evidence.

5 MS. McENROE: We asked you  
6 to present evidence, and all you  
7 did was present legal argument.

8 What's your offer of proof?  
9 What would you like to provide?

10 MR. SWATE: We'll go through  
11 every page of this.

12 MS. McENROE: In particular,  
13 what would you like to provide?

14 MR. SWATE: First, I'd like  
15 to know who Ms. Sara Collins is?

16 MS. McENROE: From the  
17 Florida Department of Education?

18 MR. SWATE: I don't know who  
19 this is.

20 MS. McENROE: [ So what  
21 evidence is that that you are  
22 presenting to us? ]

23 MR. SWATE: I'm asking your  
24 evidence. You're the one

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1                   presenting the evidence and I'm  
2                   asking what it is?

3                   MS. McENROE: [ You're not  
4                   providing any evidence. So thank  
5                   you for coming today, Dr. Tulp.  
6                   We appreciate it. ]

7                   MR. SWATE: So you're  
8                   adjourning the --

9                   MS. McENROE: Yes, I'm  
10                  adjourning the proceeding.

11                  - - -

12                  (Whereupon, the hearing  
13                  concluded at approximately 10:39  
14                  a.m.)

15                  - - -

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1 C E R T I F I C A T E

2

3 I hereby certify that  
4 the witness was duly sworn by me and that  
5 the deposition is a true record of the  
6 testimony given by the witness.

7

8

9

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LISA CAPALDO

10 Dated:

11

12 (The foregoing certification of this  
13 transcript does not apply to any  
14 reproduction of the same by any means,  
15 unless under the direct control and/or  
16 supervision of the certifying shorthand  
17 reporter.)

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